

This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

Digitized by Google



HARVARD LAW SCHOOL
LIBRARY

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

A

TREATISE

OF THE

Exchequer and Revenue

OF

IRELAND.

Digitized by Google

Digitized by Google

A

TREATISE

OF THE

Exchequer and Revenue

OF

IRELAND.

Digitized by Google

Digitized by Google

A

TREATISE

OF THE

Exchequer and Revenue

OF

IRELAND.

By G. E. HOWARD, Esq.

MOST HUMBLY INSCRIBED,

To the TREASURER, CHANCELLOR, LORD CHIEF BARON, and the Reſt of the BARONS of the COURT of EXCHEQUER.

IN TWO VOLUMES.

VOL. I.

DUBLIN:
PRINTED BY J. A. HUSBAND, FOR E. LYNCH, No. 6, SKINNER-ROW.

M,DCC,LXXVI.

Digitized by Google

TT
H848r

Rec. Jan. 5, 1899.

Digitized by Google

SUBSCRIBERS NAMES.

HIS Excelleney Earl Harcourt, Lord Lieutenant of Ireland, 6 Sets.
Rt. hon. James Lord Lifford, Lord Chancellor of Ireland.
Rt. hon. William Gerard Hamilton, Chancellor of the Exchequer.
Rt. hon. John Lord Annaly, Lord Chief Juſtice of the King's bench.
Rt. hon. Richard Rigby, Maſter of the Rolls.
Rt. hon. Marcus Patterſon, Lord Chief Juſtice of the Common pleas.
Rt. hon. Anthony Foſter, Lord Chief Baron of the Exchequer.
Hon. Mr. Juſtice Robinſon.
Hon. Mr. Baron Scott.
Hon. Mr. Juſtice Tenniſon.
Hon. Mr. Juſtice Henn.
Hon. Mr. Baron Power.
Hon. Mr. Juſtice Lill.
Late hon. Mr. Juſtice Malone.

A.

Adams, Mr. James, Commander of the Townſhend Revenue Cruizer.
Agar, James, Eſq; one of the Commiſſioners of the Revenue.
Anneſley, Hon. Richard.
Armſteed, Francis, Eſq;

B.

Bellamont, Earl of.
Barry, Gaynor, Eſq;
Betagh, Mr. Henry, Attorney.
Beresford, Rt. hon. John, one of the Commiſſioners of the Revenue of Ireland.
Birch, Robert, Eſq;
Blakeney, Mr. Charles, Attorney.
Blaquiere, Rt. hon. Sir John, 2 Sets.
Bourke, John, Eſq; one of the Commiſſioners of the Revenue of Ireland.
Browne, Hon. James.
Burgh, Walter, Eſq;
Burke, Edmund, Eſq;
Burke, William, Eſq;
Buſteed, Jephſon, Eſq;
Butler, Hon. John.

C.

Charlemont, Earl of.
Cloyne, Biſhop of.

Caldbeck,

Digitized by Google

Caldbeck, William, Eſq;
Caldwell, Charles, Eſq;
Carleton, Hugh, Eſq;
Carmichael, Hugh, Eſq;
Carroll, Mr. John, Attorney.
Carr, Mr. Richard Cooban.
Carſon, Mr. Robert, Attorney.
Chapman, Benjamin, Eſq;
Cheſter, Mr. Richard, Attorney.
Clements, Rt. hon. Nathaniel.
Colles, Mr. Richard, Attorney.
Commiſſioners of the Impreſt Accounts.
Commiſſioners of the Revenue, Rt. hon. and hon.
Connor, Charles, Eſq;
Cooke, Mr. Theodore.
Copinger, Maurice, Eſq; Second Serjeant.
Coulſon, Henry, Eſq;
Crawfurd, Gibbs, Eſq; Solicitor to the Stamps in England.
Crookſhank, Alexander, Eſq;
Crowe, Mr. James, Attorney.

D.

Deſart, Rt. hon. Lord.
Dartrey, Lord Baron of.
Damer, John, Eſq;
Darby, Jonathan, jun. Eſq;
Davis, Joſhua, Eſq;
Dennis, James, Eſq; Prime Serjeant.
Dobbyn, Robert, Eſq;
Dougherty, Mr. John, Attorney.
Dunkin, William, Eſq;

E.

Ellis, Rt. hon. Welbore, 2 Sets.

F.

Ferrall, Mr. James, Attorney.
Finucane, Bryan, Eſq;
Finucane, Matthew, Eſq;
Fitzgerald, Robert, Eſq;
Fitzgibbon, John, Eſq;
Flood, Frederick, Eſq;
Flood, Warden, Eſq;
Foſter, John, Eſq;
Franklin, Alexander, Eſq;
Franks, Mr. Thomas, Attorney.
Frazer, James, Eſq;
French, Robert, Eſq;

G.

Glaſcock, Mr. William, Attorney.
Godley, John, Eſq;
Gordon, Robert, Eſq;
Gorges, Hamilton, Eſq;
Green, Godfrey, Eſq;

H.

Hamilton, George, Eſq;
Hamilton, Sackville, Eſq;
Hart, George, Eſq;
Hellen, Robert, Eſq; Council to the Commiſſioners of the Revenue.
Herbert, John, Eſq;
Hewitt, Hon. Joſeph.
Holt, William, Eſq;
Hopkins, Francis, Eſq;
Howard, Rt. hon. Ralph.
Howard, Hugh, Eſq;
Huband, Joſeph, Eſq;
Hughes, Francis Anneſley, Eſq;
Hunter, Charles Orby, Eſq;
Huſſey, Dudley, Eſq;
Hutchinſon, Rt. hon. John Hely, Eſq; Provoſt of Trinity college.

J.

Jackſon, Mr. William, Attorney.

K.

Keliher, Mr. William, Attorney.

Kelly,

Digitized by Google

SUBSCRIBERS NAMES.

Kelly, Thomas, Eſq;
Kingſbury, Thomas, Eſq;
Kirwan, Richard, Eſq;

L.

Lane, William, Eſq;
Langriſhe, Hercules, Eſq; one of the Commiſſioners of the Revenue of Ireland.
Lees, John, Eſq;
Lennon, Remigius, Eſq;
Levinge, Richard, Eſq;
Lukey, Mr. George, Attorney.
Lyſter, William, Eſq;

M.

Mountmorres, Lord Baron of.
Macarthy, Dalton, Eſq;
Macartney, Rt. hon. Sir George, K. B. 6 Sets.
Macartney, Mr. George, Attorney.
Mc. Mollen, John, Eſq;
Mc. Nemara, Daniel, Eſq;
Malone, Rt. hon. Anthony.
Malone, Richard, Eſq;
Maſon, John Monck, Eſq; one of the Commiſſioners of the Revenue of Ireland.
Maunſell, Thomas, Eſq; Council to the Commiſſioners of the Revenue.
Montgomery, Vaun, Eſq;
Morgan, Richard, Eſq;
Morriſon, John, Eſq;
Murphy, David, Eſq;
Muſgrave, Richard, Eſq;

N.

Naſh, Andrew, Eſq;
Norton, Brett, Eſq;

O.

O'Brien, Sir Lucius, Bart.
O'Brien, Mr. Dennis.
O'Connor, Charles, Eſq;
O'Connor, John, Eſq;
Oſborne, Rt. hon. Sir William.

P.

Paul, Robert, Eſq;
Plumptre, Francis, Eſq;
Plumptre, Polidore, Eſq;
Ponſonby, Rt. hon. John.

R.

Ratcliffe, Stephen, Eſq;
Reilly, Hugh, Eſq;
Ridge, John, Eſq;
Rowley, Clotworthy, Eſq;
Ryan, Matthew, Eſq;

S.

Shelburne, Earl of, 2 Sets.
Southwell, Lord Baron.
Scott, John, Eſq; Solicitor general.
Sherlocke, John, Eſq;
Shiel, James, Eſq;
Simpſon, Mr. Richard, Attorney.
Southwell, Hon. Thomas-Arthur.
Smith, Ambroſe, Eſq;
Spring, Thomas, Eſq;
Stacpole, Joſeph, Eſq;
Staples, John, Eſq; one of the Commiſſioners of the Revenue.
Steele, Sir Richard, Bart.
Sterling, Edward, Eſq;
Stewart, Henry, Eſq;
Stuart, Hamilton, Eſq;
Swan, Edward Bellingham, Eſq;
Swan, John, Eſq;
Sweeny, Edward, Eſq;
Swift, Mr. Michael, Attorney.

T.

Tighe, Edward, Eſq;
Tiſdall, Rt. hon. Philip, Attorney general and Secretary of State.
Toler, John, Eſq;

Townſend,

Digitized by Google

SUBSCRIBERS NAMES.

Townſend, Richard, Eſq; one of the Commiſſioners of the Revenue.
Trant, Dominick, Eſq;
Tunnadine, John, Eſq;

U and V.

Vernon, George, Eſq;
Underwood, Richard, Eſq;

W.

Waller, Richard, Eſq; Solicitor to the Stamps in Ireland.
Waller, Robert, Eſq;
Wallis, John, Eſq;
Walſhe, David, Eſq;
Weſton, Robert, Eſq;
Whittingham, William, Eſq;
Williams, Adam, Eſq;
Willmott, Sir Robert, Bart.
Wolfe, Arthur, Eſq;
Wolfe, Theobald, Eſq;
Wood, Attiwell, Eſq;

Y.

Yelverton, Barry, Eſq;

Digitized by Google

PREFACE.

MY only intention, at firſt, in collecting and compoſing the following work was for my own private inſtruction and uſe; for in the year 1743, having been appointed *attorney for the King's rents in the Exchequer*, as I was in the courſe of ſix or ſeven years more to others of thoſe offices which I ſtill hold in the ſeveral legal departments of the revenue *, I very ſoon perceived that the due and proper execution of them required an accurate knowledge of ſeveral matters of which I then was totally ignorant, and with which but very few were acquainted; as the *acts* of *ſettlement* and *explanation* on the *rebellion* in

* And have been lately appointed Solicitor to the commiſſioners of the revenue.

Digitized by Google

this kingdom in 1641, and the proceedings thereon; the *truſtee act* and the ſeveral after *acts* on the ſubſequent *rebellion* in 1688, and the proceedings alſo thereon; ſeveral branches of the revenue of this kingdom, with the inſtitution and conſtitution thereof, and the changes therein; as alſo of the ſeveral offices where the ſeveral records and archieves relating thereto were to be found.

And being extremely uneaſy in this ſtate of ignorance of the ſeveral buſineſſes in which it was fit I ſhould be knowing, I immediately ſet about examining all the books and records in the ſeveral public offices of the kingdom for upwards of one hundred years before, which were in any ſort converſant with the Exchequer and Revenue of Ireland; and ſome of the gentlemen who had been for a conſiderable time deputies in the ſaid offices, having not only freely communicated to me every intelligence I requeſted of them, but alſo furniſhed me with copies of all ſuch extracts, minutes, *&c.* as they had themſelves taken, or were in their poſſeſſion, relating to the matters which they found I was collecting. What with theſe, and the innumerable copies and extracts which I had myſelf taken, together with the many

Digitized by Google

many ſpecial caſes which happened in the court of Exchequer here, relating to my ſeveral departments in the revenue, in the long courſe of three and thirty years experience, and which I likewiſe had from time to time collected; as alſo many ſpecial caſes from Engliſh authorities; the whole was at length ſwelled to no leſs a bulk in the manuſcript, than four very large folio volumes *.

But as ſeveral arduous matters, not only in the common law, but alſo of the conſtitution, (as I may ſay) of this kingdom, far above my readings and knowledge, were diſperſed through the whole, as I had collected them from various treatiſes on

* This enquiry brought to my recollection an irreparable loſs to the public, of which I myſelf had knowledge: Dudley Loftus, eſq; who had exerciſed ſome high offices in this kingdom for many years during the reign of King Charles IIt, and the ſucceſſive Kings, Charles IId, and James IId, a gentleman of great abilities and learning, having made collections of ſeveral important matters relative to the aforeſaid *acts of ſettlement* and *explanation*, as alſo to the rebellion in the year 1688, in ſeveral manuſcript volumes, they fell into the hands of my mother, who was a deſcendant from him, and ſhe having married a gentleman in the army, and they not knowing the value of them, the whole, except one volume, was uſed as waſte paper upon all occaſions in the houſe; however, in this one only volume which happened to eſcape, there were a few curious matters relative to the aforeſaid *acts of ſettlement* and *explanation*, which are inſerted in the following work.

Digitized by Google

theſe ſubjects, it never was my intention to preſume to commit them to the view of the public, until ſeveral gentlemen, not only of eminence, but of high ſtation in the law, having at different times, within the period of time I have mentioned, not only in part peruſed them, but got ſeveral extracts from them, preſſed me to do ſo.

This, at my time of life, but chiefly for the other reaſons I have mentioned, I could not think of myſelf to attempt, but thereupon immediately offered to let the public have the work, if any gentleman of the bar, of ſufficient ability, would give his time and labour to the examination of ſo voluminous a collection, and the innumerable authorities from which a conſiderable part of it had been collected, and in reducing the huge and indigeſted maſs to ſuch a degree of method and order as might render it fit for the eye of the publick; and accordingly for that purpoſe, I depoſited the four manuſcript volumes at the book ſtall in the hall of the four courts, where they remained for about nine months for the inſpection of all ſuch gentlemen of the profeſſion, and others, as were inclined to peruſe them.

In

Digitized by Google

In ſome time after, counſellor Charles O'Neill, whoſe learning, knowledge, and abilities, in his profeſſion are ſo univerſally known, that to expatiate on them here would be entirely needleſs, (after offers had been made by others who were ſpeedily deterred from the attempt by the labour and difficulty which it was conceived would attend it) of his own accord, moſt kindly undertook to fit the work for the preſs; and although it has greatly interfered with the buſineſs which his merit has ſo juſtly procured him, and of courſe his emoluments and profits thereby, yet he hath ſtill perſevered; wherefore, whatever approbation this production (of which there never has been any thing of the ſort before in this kingdom, to which it is peculiar) may meet with, to him, in a very great degree, the honour is due. I did think it would have made two folio volumes in print, but abundance has been omitted which he, from his very far ſuperior knowledge and judgment, conceived had not ſufficient authority to ſupport it.

At the ſame time I muſt obſerve to my readers, that had I met with the ſame indulgence from ſome few other perſons in office, to whom, at the

Digitized by Google

the time I have mentioned, I applied for inſtruction and materials, as I did from thoſe by whom I had been favoured as aforeſaid, the work might have been advantaged; but I not only met with refuſals, but a ſurprizing ignorance, not only of the buſineſſes of their offices, but even of records being in their poſſeſſion, which I knew to be there, and which from my enquiries they afterwards found to be ſo. One would not let me take extracts without the order of government; another conceived it would be diſcloſing the arcana or ſecrets of office, and this even in matters which it would be a public advantage, as well that every man ſhould be acquainted with, as to inform the officers themſelves, and their ſucceſſors. It is otherwiſe in England: and that the matters or buſineſs of any public office (ſave thoſe immediately connected with the ſtate, where ſecrecy may be abſolutely neceſſary) ſhould be concealed from the publick, ſeems nearly a paradox.

Wherefore, I cannot help lamenting here, as I have often done before, that there are not more public officers in this kingdom who are leſs attentive to the emoluments than to the knowledge of the buſineſs of their offices; and that ſkill, abilities,

Digitized by Google

abilities, and true merit, hath at times been ſo little conſidered in promotions to offices; and that the office had been ever ſought out for the man, and not the man for the office. But of this I am fully convinced, that had the contrary been the practice in the revenue, and that the ſeveral officers employed therein, eſpecially in the exciſe, had been raiſed from one department to another, for their approved good conduct only, there would have been an exertion in all, not only in the doing of their duty, but to excel; and the encreaſed produce of the ſeveral revenues of the kingdom would at this day have been ſuch, that not one half of the additional duties which are now in being, might at this day have been wanted. But where the ſalaries of offices are but ſmall, (the moſt of them being the ſame as they were when one pound ſterling of money would purchaſe as much of the proviſions of life as three will now,) and that ignorance, indolence, or demerit, ſhould be preferred to and have the ſuperintendency of knowledge, (which comes not by inſpiration) integrity, and activity, than which, in the common tranſactions of life, there is not any thing more mortifying, if the poor diſpirited, injured officer ſhould in ſuch caſe continue to be honeſt, and merely execute his office, is it not

as

as much as may in reaſon be expected of him? I have often heard Sir Richard Cox, that very able revenue officer, who died a commiſſioner, ſay, that more than one third of the revenue of exciſe of this kingdom was not then collected, which might have been collected, and that much was owing to this grievance, which for many years before the time he mentioned this, had been the common practice in the revenue.

If ever there was a likelihood of a thorough reformation in this way, I think I may with confidence ſay, it is in the preſent adminiſtration of this kingdom; where the moſt intelligent, worthy, generous, and accompliſhed nobleman, who preſides in it, hath hitherto been (it is well known) as induſtrious to make himſelf acquainted with the conſtitution and buſineſs of the kingdom, as he is to ſeek for, and reward the deſerving; and if not impeded by ſome of thoſe illuſive ſpirits, (who, in this, as it is in another kingdom, under the alluring ſhew of patriotiſm, or from a *little* itch for popularity, a vice the inſtant it is ſought, and is below the noble mind, are its greateſt enemies) would contribute cheerfully to make it ſpeedily a very flouriſhing one.

The

Digitized by Google

The produce of the *caſual revenue* alſo, might beyond all doubt be improved ſeveral thouſands a year, and the execution of the public juſtice of the kingdom (the far more material conſideration) at the ſame time forwarded greatly. This revenue ariſes chiefly from forfeited recognizances acknowledged for the appearance and proſecution of perſons guilty of breaches of the peace in outrages and violences of every kind; as alſo of fines and amerciaments, impoſed by the ſeveral courts of juſtice in the kingdom, on their officers and others for neglect or breach of duty in the execution of juſtice, and for other offences.

Which recognizances, fines, *&c.* being eſtreated twice a year into the Exchequer, are iſſued thence twice alſo in the year, in the three ſeveral proceſſes, commonly called the proceſs of *green wax*; the firſt, according to *magna charta*, againſt goods only; the ſecond againſt body, goods, and lands; and third againſt them alſo, and againſt heirs, executors, and adminiſtrators, (a full account of which is in this work) and directed and ſent to the ſeveral ſheriffs of the kingdom, in order to levy the ſeveral ſums therein, for which they are to account in the Exchequer, after they are out of office, at certain times preſcribed by law for the purpoſe.

Digitized by Google

Now, were the attention paid to this very important department of the police of the kingdom, which, to promote its execution, ought to be paid to it, by thoſe who are concerned in the ſeveral ſtages thereof, beſides increaſing the caſual revenue very conſiderably, it would be a principal means of promoting that due, that abſolutely neceſſary obedience to the laws, which is ſo much wanting in this kingdom, and of courſe contribute greatly to the prevention of the many riots and violences of every kind, for which it is at preſent noted above all the other nations in Europe; not one in twenty of which would happen, were it not for the ignorance of ſome, the neglect or miſconduct of others, and, I much fear, the corruption of ſeveral among thoſe who are employed in the conduct of this buſineſs, as I think I can prove to an abſolute demonſtration.

For the purpoſe, the evil originates often, indeed too often, with the juſtice of the peace; who, being informed, either upon the *Examination* of the perſon injured, or the *Information* of ſome other, of ſome outrage committed againſt the peace of ſociety, perhaps neglects to take down the place of abode, occupation, or other addition, of the *Informant* or *Examinant*, by which they

Digitized by Google

they may be afterwards found, either in the examination, information, or recognizances, to appear and profecute; and if the offender happen to be brought before him, and that ſureties are taken for his appearance, not only the ſame neglect or omiſſion is committed, but perſons taken as ſuch ſureties, who are neither of credit, ſubſtance, or known reſidence, how flagrant or outrageous ſoever the offence may have been.

Then, let the juſtices of the peace be ever ſo careful in theſe matters, and of tranſacting them properly, and that ſuch additions of occupation, place of abode, *&c.* to aſcertain the perſons, ſhall have been inſerted in their recognizances, yet, when theſe recognizances, either at the aſſizes, or at the quarter ſeſſions, are on default of appearance or proſecution, ordered to be eſtreated, the ſeveral clerks of the Crown and peace of the kingdom (who are very material officers in this (I muſt again repeat it) moſt important buſineſs, and have it much in their power to promote or defeat it, neglect or omit to inſert thoſe additions in the eſtreats which are to be returned into the Exchequer, notwithſtanding the rule of the court of the 22d of June, 1772, for the purpoſe. So likewiſe the ſame neglects or omiſſions are com-

Digitized by Google

mitted by these officers, where fines are imposed on transgressors and defaulters, not only at the assizes and sessions, but also in superior courts of record, commissions of oyer and terminer, &c. Nor is this all; many of these fines and forfeited recognizances, from favour, affection, party, partiality, or other improper consideration, are either not entered in the books of these officers, or, if entered, not extracted therefrom, or inserted in their estreats; and often these estreats are never returned.

But when these estreats have been returned to the court of Exchequer, they are issued in process to the several sheriffs of the kingdom, (as is before mentioned) to whom they are to be delivered by the pursuivant of the court, after he has received them from the several other officers thereof, whose business it is to deliver them to him, and for all which transactions certain stated times are appointed by rules of the court, that the sheriff may have sufficient opportunity, before the returns in the process expire, for the execution thereof, which has often happened otherwise, through the neglect or default, or other misbehaviour, of the pursuivant.

Now,

Digitized by Google

Now, by the ſtat. 12 Geo. I. c. 4. ſheriffs ſhall have an allowance upon theſe accounts of 12d. out of every 20s. for every ſum not exceeding 100l. and 6d. for every 20s. over and above the firſt 100l. of all money (except poſt fines) which they ſhall levy on the aforeſaid proceſs of the pipe or green wax proceſs; but this allowance is ſo greatly inadequate to the trouble and expence which muſt of courſe attend the collection of ſuch a number of ſums from ſuch a number of perſons, many of them wretchedly poor, and diſperſed through the whole county, that the high ſheriff leaves the whole tranſacting of this buſineſs to his ſub-ſheriff, who generally delivers the proceſs to the ſheriff's bailiffs to be executed, who are uſually of the loweſt of the people, and are not ſworn to the execution thereof; ſo that, perhaps, out of one thouſand perſons which may be in one of theſe proceſſes, it frequently happens that a ſheriff, on his appoſal in the Exchequer, may not account for ten of the ſums therein, (except cuſtodiam rents and poſt fines, in which caſes only the court will not receive ſuch a return, as the lands charged therewith cannot but be known, and the ſums of courſe be levied therefrom) but on the contrary, poſitively

Digitized by Google

positively swear, on the return of the bailiffs to them, that perhaps 950 persons of the one thousand have not either bodies, goods, or lands, in his county, although such persons must, in the case of recognizances, have appeared before the magistrates who took the same; as also (frequently) in the case of fines in the courts, where they were imposed; by which whole series of misconduct, this most important and very expensive process of justice is rendered almost totally fruitless, and his Majesty's casual revenue is considerably injured, to the real loss of the public.

Quid tristes querimoniæ
Se non supplicio culpa recidtur?
Quid leges sine moribus,
Vana proficiunt?

HOR. lib. 3. Od. 24.

But wherefore do we thus complain,
If justice wears her awful sword in vain?
And what are laws unless obey'd
By the same moral virtues they were made?

FRANCIS.

But now the question may reasonably be, what are the remedies for all these inconveniencies and mischiefs?

In

Digitized by Google

In the first place then, it is proposed, that by a law to be made for the purpose, no person shall hereafter be appointed a justice of the peace in any county of the kingdom, who hath not an estate of inheritance, or other freehold, or profit rent on leasehold interests, in the same county, of at least 300l. a year, except any number not so qualified, not exceeding four at a time, for the county of Dublin, to be approved of and appointed according to the present method for that purpose, and that they only be appointed who are most noted for their abilities, wisdom, and integrity. As to their qualifications, see 1 Ed. III. stat. 2. c. 16. Eng. 34 Ed. III. c. 1. Eng. 13 Ric. II. stat. 1. c. 7. Eng. 2 Hen. V. stat. 2. c. 1. Eng. and 18 Hen. VI. c. 11. Eng. none of which have been repealed, and are of force in Ireland.

And as by several statutes, also, many offences are appointed to be tried by the justices of the peace of the several counties of the kingdom, at their quarterly sessions, as if the same were regularly and properly held, suppose a law should be made for the more regular and effectual holding of these sessions, and for punishing by fine, or removal,

Digitized by Google

removal, ſuch of the ſaid juſtices as ſhould abſent themſelves therefrom, without ſufficient excuſe; as this would be a certain means of ridding the juſtices of aſſize and goal-delivery of a conſiderable part of that trouble which they have in the trials of inferior, petty offences, the undoubted duty of the juſtices of the peace, but which at preſent is almoſt totally and ſhamefully neglected by them, and enable the judges of aſſize the more effectually to tranſact the more material buſineſs of the country, as it would at the ſame time prevent that much to be lamented loſs of time of the labourers of the country, who are too much diſpoſed to be wantonly idle, in attending the aſſizes ſeveral days, at the material ſeaſons in the year of ploughing, ſowing, and reaping, beſides the coſt and expences they are at, moſt heavy to them. As to the powers of the peace juſtices, ſee the before-mentioned ſtat. 34 Ed. III. c. 1. Eng. 36 Ed. III. c. 12. Eng. 2 Hen. V. ſtat. 1. c. 4. Eng. and 4 Hen. 7. c. 12. Eng. none alſo of which have been repealed, and are likewiſe all of force in Ireland.

To reduce, then, all theſe ſtatutes into one ſufficient and effectual act, for the regulation of this moſt important office, and to impower the juſtices

Digitized by Google

juſtices of the peace alſo, at their quarterly ſeſſions, to try and finally determine all demands or actions whatever, not exceeding 40s. value; and for that purpoſe, and for the accommodation and eaſe of themſelves, and the other inhabitants of the county, to hold each quarterly ſeſſion at a different town in the county, and four of the principal ones to be fixed for that purpoſe; and to have the ſame fees upon all ſuch actions as are now paid in ſuits in civil bills; I am convinced I may venture to pronounce with certainty, that after a very few years perſeverance in theſe matters, as alſo in a cautious taking and due and faithful returning of recognizances, (than which there is not any part of the buſineſs more material) together with the neceſſary aſſiſtance of a properly appointed and well regulated office of ſheriff and its under officers, ſuch an appellation as a White boy, an Oak boy, or an Heart of Steel, would not be heard of in a county in the kingdom; and that good order, peace, induſtry, and proſperity, would be eſtabliſhed on a ſure and permanent foundation in all. In England, although this office is not attended to or executed as it was formerly, and as it ought to be, yet it is far better there than it is here. That juſtices of the peace may (as well as ſheriffs, clerks of the

Digitized by Google

Crown and peace, and others) be punished for their neglects or misconduct in this business, by fines imposed on them by the court of Exchequer, there have been instances; or the chancellor may supersede the commission and remove the persons so charged from the office, upon the matter being properly laid before him by the Barons of the Exchequer; but it is far better to prevent a mischief than to have occasion to punish the offender.

The officer next in order, to be considered, and a very principal one in the conduct of this business, is the sheriff of the county: he is (as has been just mentioned) the collector of this branch, as he formerly was of all others of his Majesty's revenue, and as such is entrusted with the execution of the green wax process; and on his fidelity and diligence therein depends in a great measure the advantage which is to arise therefrom to the publick, in the preservation and security of the peace and happiness of society, and the improvement of this branch of the King's revenue, which for the benefit of the publick, is applied in aid of other revenues to defray its expences.

Wherefore,

Digitized by Google

Wherefore, it is to be wiſhed that none but the principal gentlemen of the firſt reputation and credit, with ſufficient eſtate, (at the leaſt 500l. a year) in the ſeveral counties in the kingdom, were to be appointed to this office of dignity, truſt, and authority; upon the due and proper execution of which, the property, the life, and the liberty of every individual, and the peace and ſafety of the whole, abundantly depend, and for the defence of all which it was beyond all doubt originally inſtituted, as may appear by the many excellent laws which have heretofore from time to time been made for the appointment, qualifications, and powers of this great officer; ſuch as Artic. ſuper chart. 28 Ed. I. c. 8 & 13. Eng. 9 Ed. II. ſt. 2. Eng. 2 Ed. III. c. 4. Eng. 4 Ed. III. c. 9. Eng. 5 Ed. III. c. 4. Eng. 14 Ed. III. c. 17. Eng. and 12 Ric. II. c. 2. But the high importance of this office will beſt appear from a relation of ſome of the eſſential buſineſſes with the execution of which this officer is entruſted, for the advantage of the community.

Does he not, then, return the juries who are to try our lives, our properties, our liberties? And if in this he is corrupt, would not this main

Digitized by Google

pillar of our freedom, this moſt valuable bleſſing, (which of all the people on the globe they of our glorious conſtitution only enjoy) be as tho' we had it not? Is it not by this officer that our laws are to be finally executed? And if in this he is corrupt, (which from men of ſcanty circumſtances, or ſmall reputation, there is but too much reaſon to fear might be the caſe) would our laws be then any other than a mere dead letter, to the utter deſtruction of credit and commerce? But above all, is the high truſt which is repoſed in him on elections of members for the legiſlature; on his conduct in which, our glorious conſtitution chiefly depends *.

At the ſame time I muſt obſerve, that if any proceedings have happened in the appointment

* To ſuch a pitch is the abuſe of this very eſſential office at preſent arrived, that it is twenty to one if a writ be executed in any of the diſtant counties of the kingdom; or if it be that the plaintiff is not by the iniquity of an under-ſheriff kept from the benefit of it until he is more wearied in ſeeking it from this ſubordinate miniſter of juſtice than he was from his original debtor, to the almoſt entire deſtruction of credit; which verifies what has been ſaid of our conſtitution, "that we of all civilized nations have "the beſt framed, but worſt executed laws." Nor is the Crown's revenue, ſuch part as the ſheriffs collect, as aforeſaid, more eaſily got out of their hands.

to

Digitized by Google

to this office, in the leaſt degree inconſiſtent with the aforeſaid ſeveral ſtatutes, or with the ſtricteſt adherence to the eſtabliſhed principles of our conſtitution therein, it muſt in this caſe have ariſen (as it is well known it did on the Exciſe law,) from an abſolute neceſſity, and from this unaccountable miſtake, that the intereſt of the Crown and that of the people can, in the true and real ſenſe of the matter, in our conſtitution, poſſibly be inconſiſtent; from which it has often been as difficult to get ſheriffs to return jurymen where the Crown has been concerned againſt the ſubject, who were not biaſſed in favour of the latter, as it was alſo to get jurymen who were not ſo biaſſed where ſheriffs were really impartial; wherefore, the complaints of grievances, which, it is alleged, have ariſen to the publick upon theſe occaſions, are in the general bellowed out by thoſe, who, too often, from their own improper proceedings, have been the cauſe of any alteration, or change, which may have been in the proceedings in either of the two departments I have mentioned *.

But

* The method which has been for many years of appointing ſheriffs is thus: The judges of aſſize, on their ſummer circuits, require the ſheriffs in office in the ſeveral counties in the kingdom, each of them, to return them the names of three perſons in each county

But to return, if ſheriffs upon the execution of this proceſs, inſtead of 12d, which is all they are now allowed on their accounts, as aforeſaid, out of every 20s. for every ſum not exceeding 100l. were to be allowed 5s. and inſtead of 6d. for every 20s. over and above the firſt 100l. to be allowed 2s. 6d. for all money, (except poſt fines and cuſtodiam rents, in which laſt caſes to be allowed 6d. in the pound only) it has been conceived, it would ſpeedily have that moſt ſalutary and much to be wiſhed-for conſequence, of greatly ſecuring and preſerving the ſafety and peace of ſociety, as the perſons fined or mulcted in this proceſs could not then afford to tamper with the under officers employed by the ſheriffs in the execution thereof; which proceſs in many parts of the kingdom are, for the reaſons I have herein mentioned, abſolutely held in contempt;

county proper to ſucceed them, which they accordingly do; and at the meeting of the judges in the chancellor's chamber on the *morrow of All Souls* in the following *Michaelmas term*, the lord chancellor calls on them for their returns, which, when received, he delivers to the lord lieutenant, who *appoints* one for each county out of each return. But note, the judges have a power before they make their returns to alter the perſons, or any of them, in their diſcretion. All which is a good deal agreeable to the aforeſaid ſtat. 12 Ric. II. c. 2. But ſee Blackſt. vol. I. 339, *&c.*

ſo

Digitized by Google

ſo that our laws are quite uſeleſs, mere *bruta fulmina et vana*, beſides the loſs of ſeveral thouſands a year to the caſual revenue; for even after the allowance of this large poundage to ſheriffs, the encreaſe to this revenue would be conſiderable from the collection of innumerable ſums which in all likelihood, for the reaſons before mentioned, might never have happened. What induced the lords to reject the bill for this purpoſe, the laſt ſeſſion, after it had been approved of in all the other ſtages through which it had paſſed, is hard to conceive, unleſs it was occaſioned by a few miſtakes that were in it, which had been introduced in ſome alterations which had been made in the original draft, which was prepared by me.

At the ſame time, the judges, who have the diſcretionary power of impoſing fines for offences *unaffeered per pares*, are ever to bear it in mind, that in an Britiſh conſtitution, an abſolute neceſſity only can warrant it; and that of whatever benefit the *uſe* of it may be to the publick, in the ways I have mentioned, yet, that its *abuſe* might cauſe us to wiſh it had never exiſted. To conſider alſo, that no plea can be to the Eſtreat of a fine which is not firſt laid before the *court of Exchequer* for their permiſſion. The recogni-

zances

Digitized by Google

zances ſtand upon a different footing, they are acknowledged by the parties thereto.

Beſides, as to this office of ſheriff, this moſt important as laborious office, for the ſervice of the publick, it is a matter well known, that what from the expence which ſheriffs are at in the paſſing of their patents, the heavy charges on them in ſeveral of the offices of the Exchequer on paſſing their accounts, but above all on reducing of fines, which have been impoſed on them by the court, for the neglects, defaults, or other miſbehaviour, or miſconduct, of the under officers, which they muſt of neceſſity employ, and chiefly in this buſineſs of the green wax proceſs, they are, in the general, conſiderable loſers by the office; and that not only they themſelves, but their families after them, have often been involved in the moſt diſtreſſing difficulties.

Even the indulgence they receive in the length of time which is allowed them by the court *to account*, *to pay their tots*, and *to clear their accounts*, (the three ſtages through which they are to paſs in order to be diſcharged and obtain a quietus,) being at leaſt double what it was formerly, as will appear by the books in the treaſurer's

Digitized by Google

treaſurer's remembrancer's office, (which alteration, and the miſtake on which it is founded, is fully ſet forth in the following work) whereby, before the ſheriffs are compelled to account, their ſub-ſheriffs and their ſureties may be rotten in their graves.

It has been the opinion of ſeveral of the firſt in knowledge in this branch of the revenue, that the preſent courſe of the proceſs of green wax might be abundantly abridged; or that one well-ordered writ might do inſtead of the three which now iſſue, whereby a prodigious expence would be ſaved to the Crown, as alſo very great labour and loſs to the ſheriffs of the kingdom, and much benefit gained to the publick: whereas, by the preſent courſe, the *Pipe*, or ſecond proceſs, without any colour of reaſon, and againſt a ſtanding rule of the court (23 Nov. 1685) to the contrary, iſſues twice; and then the *Treaſurer's remembrancer's proceſs*, with the *Prerogative writ*, alſo called the *long writ*, annexed thereto, which, although it be againſt every thing, body, goods, lands, heirs, executors, and adminiſtrators, and an *Inquiry to be held thereon*, yet is rather leſs effective than any of the others; nor is it to be wondered at, from the manner in

Digitized by Google

which it is executed, which is thus; the ſub-ſheriff in ſome little town or village in the county, perhaps in a cabin on the road, where twelve of the loweſt of the people, his bailiffs and others his creatures, are the jury, and a general inquiſition returned of neither body, goods, lands, heirs, executors, or adminiſtrators in the whole county, as to every perſon contained in the proceſs, although by a ſtanding rule of the court (14th May, 1717,) the inquiry on this writ is to be held in every barony in the county; ſo that in a courſe of thirty years, for which period I have been Solicitor for the caſual revenue, I have not ſeen as many ſums brought in thereby; and the ſame nugatory proceedings have been of late upon the Pipe proceſs. But as all theſe matters may be the better judged of from the whole of the proceedings, which are in the following work, with my occaſional obſervations thereon, I ſhall refer my readers thereto.

Others have thought, that it might anſwer the purpoſed ends much better, if the preſent mode of collecting the caſual revenue was to be changed, as that of the other revenues hath been, by transferring it to the ſeveral collectors of Exciſe in the ſeveral diſtricts in the kingdom inſtead of the ſheriffs,

Digitized by Google

ſheriffs, with good allowance on collection, but not by ſalary; and eſpecially as the books of the hearth-money collectors would be of ſingular uſe therein, by which the places of reſidence of the inhabitants of every county, who pay hearth-money, might eaſily be known: beſides, copies of the ſummoniſter's proceſs are ſent out twice in every year, to wit, in Hilary and Trinity vacations, by the Solicitor for the caſual revenue * to the ſeveral collectors of the kingdom, to enquire of the ſeveral perſons therein, and of their perſonal effects, and to make return thereof to him, or to the commiſſioners of the revenue, that he may therefrom be enabled to cheque the ſeveral ſheriffs on their accounts upon this proceſs; ſo that they have already a conſiderable part of the trouble which they would have, were

* He is by this office ſuperintendent of every other perſon concerned in the buſineſs of this branch of the revenue; and ſhould therefore with the greateſt attention and diligence purſue the *Inſtructions* he receives with his commiſſion. This Office, it is to be obſerved, was formerly held with that of the *Clerk of the Informations in Dublin port*, under the ſame commiſſion, which was worded as if the buſineſſes of both were connected; whereas, no two in the revenue are more foreign to each other; and they were alſo held by perſons ignorant of the law, whereas attornies only are the perſons proper to conduct them, as the aforeſaid *Inſtructions* for both, (which are blended, but may be eaſily ſeparated, and annexed ſo to the commiſſion for each,) will fully evince.

Digitized by Google

they to be the collectors of this branch of the revenue. It is a matter very worthy of conſideration, and would require the matureſt. That it would deprive ſeveral officers of the Exchequer of large fees and profits, which they make by this branch of the revenue, and by the accounts of ſheriffs, is moſt certain; but this is a matter, which, if put in competition with the advantage of the publick, is ſcarcely worth a thought, as they may be recompenſed by the publick, and eſpecially as by the preſent mode of proceeding, a large expence is incurred with but little profit to the publick, whereas the advantages to it would be exceeding great were this buſineſs properly conducted.

The clerks of the Crown and peace, as well as the juſtices of the peace of the kingdom, have it equally in their power to promote, as to poſtpone, or defeat the execution of its publick juſtice, as alſo to improve, or reduce the income of the caſual revenue. For inſtance, if juſtices of the peace would be careful in not ſuffering any perſon to become ſureties for the appearance of perſons charged with offences, but ſuch as are of ſome degree of credit and ſubſtance, and known reſidence; if they would inſert in the recognizances which

Digitized by Google

which they take, the places of abode and occupations of ſuch, as it will appear by the following work they are bound to do, or may be fined, nay, removed; if the clerks of the Crown and peace alſo would be as careful to do the like in their Eſtreats, which they return to the Exchequer, and as punctual in the returning thereof as they are alſo bound, under the like penalties, to do; if on all fines hereafter to be impoſed in any of his Majeſty's courts of record in Dublin, or elſewhere, commiſſions of oyer and terminer, as alſo at the aſſizes or ſeſſions, and other courts, where fines or amerciaments are uſually laid or impoſed, the ſeveral clerks of the Crown and peace, or other proper officer, would immediately enter down the additions and places of abode of the perſon or perſons ſo fined, (all which requiſites the ſaid ſeveral officers alſo, by the rules of the court, as will appear by this work, are bound to perform) and that the judges of aſſize would themſelves compare the Eſtreats with their own private court-books, which they ſhould ever keep as a check upon thoſe of the clerks of the Crown, and in which they ſhould be moſt careful to enter every forfeiture and every fine they impoſe, in order to prevent the groſſeſt offenders (from any intereſt or improper influence,

as

Digitized by Google

as has been often the caſe) from eſcaping the puniſhment they juſtly deſerve; and to ſee that true and faithful returns are made thereof, or elſe this moſt important and expenſive proceſs muſt become a perfect nullity.

Then, the offices of clerk of the Crown and peace are uſually in the ſame grant, through the whole kingdom, ſo that the deputation of the latter is as uſually purchaſed or farmed; the probable conſequential evils of which are ſo glaring, it were needleſs to ſuggeſt them: wherefore, it has been conceived, it would be better for the publick if the offices were to be ſeparated.

But there is another matter which alſo is moſt worthy of attention. In England, by ſeveral ſtatutes there, 37 Hen. VIII. c. 1. 3 & 4 Ed. VI. c. 1. and 1 Will. & Ma. ſtat. 1. c. 21, the *cuſtodes rotulorum* there have a power of appointing clerks of the peace, yet notwithſtanding that theſe offices, in this kingdom, are by the King's grants, and that there is no ſuch ſtatute here, yet ſeveral lords lieutenant of counties (as they are here called) have taken on them to appoint to this office of clerk of the peace, which is not only moſt injurious to the legal patentee, (who is generally the

Digitized by Google

the purchaſer thereof) but alſo of much miſchief to the publick.

Then again, there are ſeveral corporate cities and towns in this kingdom to whoſe corporations, all the fines, ranſoms, and amerciaments, for all crimes and treſpaſſes within ſuch cities and their precincts, and all recognizances, penalties, and forfeitures, of all the citizens and inhabitants therein, are granted; who therefore have conceived that the clerks of the Crown and peace, of their juriſdictions, are exempted from returning the eſtreats thereof to the court of Exchequer, and orders of the court have been inconſiderately (I believe) conceived to that purpoſe. But the better opinions ſeem to be, that theſe fines, *&c.* ought to be eſtreated for the ſake of publick juſtice, as alſo of the party on whom they were impoſed, who if he conceives they were illegally or improperly impoſed, may, on application to the court, be admitted to plead to the eſtreat thereof, or they may be reduced, if foundation for favour ſhould appear to the court, and partial proceedings prevented, where theſe indulgent grants are given.

And

Digitized by Google

And ſurely alſo, never did a fairer opportunity offer than in the preſent adminiſtration, to petition for ſome law to reſtrain the daily practiſed abuſes and conſequential grievous miſchiefs which attend the *obtaining cuſtodiams upon outlawries in civil actions between party and party*; which are injuring every day more and more the common ſecurities of the kingdom, and deſtroying its credit; and all this moſt abſurdly under the fiction of the prerogative of the Crown, which is no more really concerned therein (as I have before mentioned in the preface to my treatiſe on the Pleas-ſide of the Exchequer, to which my readers are referred) than is the prerogative of a *Nabob of India*; yet, were it ſo, it was even ſaid by King Charles I. (who fell a ſacrifice to his zeal for what he thought the prerogatives of the Crown, and the rage of fanaticks) in his anſwer to the petition of rights, in the third year of his reign; "That his prerogative was to defend the rights "and liberties of the ſubject, as were the rights "of the ſubject to ſtrengthen his prerogative." Will any perſon, then, be hardy enough to ſay, that this prerogative ſhould ever be in fiction uſed to injure thoſe rights? And would not ſuch a proceeding be rather an injury than an advantage to the prerogative? And is it not an offence

Digitized by Google

offence to our virtuous, pious Sovereign, whoſe benign heart, I am convinced, it would grieve, were he to be apprized of the unfit uſe which is ſo frequently made of his royal prerogative. But as I have in my ſaid former preface endeavoured to ſet forth the whole of the very improper, nay, unjuſt proceedings on this proceſs, I ſhall only ſum up here the many grievances which are the ſure attendants thereon; nor ſhould I have repeated any of them, but that they more properly belong to the following work, as alſo the more ſtrongly to inculcate them on the minds of thoſe who may procure the redreſs.

This proceſs, then, which is againſt body, goods, and lands, (and by which the unfortunate perſon againſt whom it iſſues is proclaimed a contemnor of the laws, a rebel, and a fugitive, although not ſerved with any proceſs, ſummons, or previous notice thereof whatever, and is viſible every day) may be iſſued for the ſmalleſt ſums, for an uncertain, nay, for a fictitious ſum, (as is often the caſe) for neither bond, judgment, note, affidavit, or other voucher is produced, or even required, as it is in every other caſe, as a foundation for this violent proceeding; and yet it ſhall have preference to, and take place of every

Digitized by Google

other proceſs in the law, even in caſes where the moſt ſolid ſecurity has been given.

The dowered and the jointured widow, the purchaſer, the judgment creditor, the mortgagee, unleſs he be in the actual receipt of the rents *, and the every other real, fair incumbrancer, are often without the leaſt notice (for almoſt the whole proceedings are, as I have ſet forth in my ſaid preface, as clandeſtine as they are injurious) ſtript of their ſecurities, put to great, to grievous trouble, and to moſt unjuſtifiable expence, the coſt having been often many times more than even the fictitious ſum; the *before* miſerable tenants of the eſtate eternally harraſſed, until driven to emigrate. The landlord, ſhould it be a derivative intereſt which is attached on this proceſs, rendered incapable of bringing an Ejectment for non-payment of rent without the permiſſion of the Exchequer, on a motion to be made by his counſel; (which permiſſion even cannot be applied for, without the conſent of the Attorney general, as guardian of his Majeſty's prerogatives, to be

* But quære, If the mortgagee be not in the actual poſſeſſion, on default of payment of the money on the day appointed by the deed, and if the mortgagor be not thereby abſolutely tenant to the mortgagee for the lands.

previouſly

Digitized by Google

previouſly had for the purpoſe) whereas, this unfortunate landlord may have no more to ſay to the debt or demand than an inhabitant of Siberia, and muſt be a diviner to know the names of the many creditors of his tenant who have cuſtodiams againſt him, as otherwiſe the ſearch for them may be endleſs, beſides the heavy expence attending this motion, (for which ſee my ſaid preface, and the chapter on Cuſtodiams in the following work) and all this under the aforeſaid fiction of the Crown's prerogative being concerned therein.

Then, this ſame moſt unlucky outlawed perſon (who perhaps on a fair trial might not owe the plaintiff a ſhilling) is thereby put out of the protection of the law, ſo that he is incapable of ſuing for his rights, or bringing any action for redreſs of injuries, and all his goods and chattels, without any committed offence, forfeited to the King; he is incapable of being either a grand or a petty juryman; and ſome have thought (which I leave to the learned) of voting on an election, or filling any office in the ſtate, whilſt this (perhaps moſt unjuſt) outlawry is ſubſiſting againſt him.

Digitized by Google

And then, upon this proceeding, the creditor takes all, and by *Elegit* but a moiety; by this, he gets an *actual poſſeſſion*, on the ſame fiction that the King is concerned; by *Elegit*, in the general, but a legal poſſeſſion. Suppoſe then, that this proceſs ſhould never be permitted to iſſue but upon a poſitive affidavit of at leaſt twenty pounds being juſtly and fairly due by the defendant to the plaintiff; that no priority ſhould be given to the execution thereon, but as it is now by law between *Elegit* and *Elegit*; and (as I have before mentioned) that *Elegits* on judgments ſhould reach the whole eſtate, as is the caſe on theſe Cuſtodiams, and on ſtatutes of the ſtaple; and that the fair creditor ſhould get an actual poſſeſſion thereon, without the trouble, loſs of time, and expence of an Ejectment to get a ſecond poſſeſſion of the ſame thing; or provide (as in other caſes) that all the aforeſaid ſtrongly intereſted perſons ſhould have real and ſufficient notice of the oppreſſive and diſtreſſing proceedings on this proceſs; would it not be better for all the perſons I have mentioned as intereſted, which may include the whole nation, except the Attornies and Officers of the courts who iſſue, and the ſheriffs and ſub-ſheriffs who execute them. It has been ſaid,

Digitized by Google

ſaid, that the judgment creditor may prevent his being injured by this proceſs, by extending immediately on an *Elegit*; but every man who knows any thing of theſe matters, muſt know that this would as effectually deſtroy this common ſecurity of the kingdom, as this proceſs is effecting it every day.

Attempts have been made, and ſome of them of my promotion, to relieve us from the dreadful *abuſes* which attend the proceedings on this proceſs: but, alas! the private intereſt of a few individuals prevented it, as hath been too frequently the caſe in this unfortunate kingdom; yet, old as I am, I will not yet deſpair of ſeeing it accompliſhed; if not, I have this comfort, that I have done my part to the beſt of my abilities, and without any private gain or ſelfiſh view. The paucity of caſes in the books (I mean the Engliſh publications, for there are none here) will evince how very ſparingly the proceſs of outlawry have been ever uſed in England; and in one of them, 12 Mod. 413, there is a caſe, where a perſon having outlawed another in a civil action, whom he knew was viſible, and might be eaſily ſerved with proceſs, was ordered to reverſe the outlawry at his own charges. And ſome years ago, having written to an officer of the Exchequer in England,

Digitized by Google

England, my acquaintance, for the proceedings upon *Cuſtodiams*, and *Injunctions* upon ſuch Outlawries, in civil actions between party and party, he ſent me the rules of the revenue ſide of the court of Exchequer there, (which are yet in my poſſeſſion) and among them, there is but one in any ſort relating thereto, which is of the 13th of May, 16°9, and is, "That where any outlawry ſhall be tranſcribed into the court, and "proceſs made out thereon, and afterwards ſuch "outlawry ſhall be reverſed, before any judgment "ſhall be entered for removing the hands of the "Crown, and the party outlawed reſtored to his "poſſeſſion, the proſecutor of ſuch outlawry ſhall "be paid ſuch coſts as ſhall be taxed by their "Majeſties Remembrancer, or his deputy, for the "proceedings in the ſaid court." And at the ſame time informed me, that he had been ſeveral years an Attorney of the court, and had never been concerned in any ſuch proceeding. And in 2 Atkins, 408, it is mentioned, as if it were a ſpecies of proceeding peculiar to this kingdom. In truth, it is a proceeding the *abuſe* of which is almoſt equal to the deſtroying of the credit of a country, and is a diſgrace to the juſtice thereof.

There

Digitized by Google

There is yet another object worthy of attention, and that is the preſent ſtate of the malt liquors of this kingdom, that indiſpenſible neceſſary of life; a matter worthy of moſt ſerious conſideration and attention, not only with regard to the great loſs which the kingdom ſuſtains by the prodigious ſum which the vaſt importation of this commodity takes from it yearly, and the great diminution of his Majeſty's revenue of Inland Exciſe; but chiefly to the health and morals of the lower ſort of people, which are almoſt deſtroyed by the ſubſtitution and too general conſumption of ſpirituous liquors; there being hardly a village, nay, even a large town or city, in the kingdom, where a drop of Iriſh Ale or ſtrong beer is to be had which the pooreſt wretch can with ſafety admit into his ſtomach; nothing but Engliſh Porter, which they of circumſtances only can purchaſe; and even this from the ſlowneſs of its vent, and the adulteration it ſuffers, is often hardly drinkable, to the extreme great prejudice of thoſe two important objects, tillage and manufactures.

In order the more fully to inveſtigate this moſt intereſting matter, it will be neceſſary to take an account, which may be eaſily obtained, of the quantity

Digitized by Google

quantity of Engliſh ſtrong Beer and Ale imported at preſent into this kingdom; of the duty of cuſtom and exciſe, and other charges here thereon; the Inland Exciſe upon the Iriſh malt liquors; the expences of this manufacture; the difference in thoſe expences between the time the duties were impoſed thereon and now, and the prices at which the Engliſh and Iriſh malt liquors are in the general ſold at in both kingdoms; in which, we are alſo to take into conſideration, the great advantages which the Engliſh brewers have over thoſe of this kingdom, from the prodigious bounty upon exportation; in the meaſure of their gallon, and in the hops to the brewers there and here, not only in price, but in the quality, as they have the firſt choice, *&c.*

When all this ſhall be done, I am inclined to think that, on a fair comparative view, it will appear that until the brewers here have ſome further encouragement for brewing better liquor than they have at preſent, we may deſpair of ever having it; as ſome proof whereof, it muſt be within the memory of many, when good wholſome ale was ſold in this city for two pence and excellent for two pence half-penny a quart; ſo that it was uſual for mechanicks, and others of higher rank, to

Digitized by Google

to ſpend an evening over a cup of it; and there were ſeveral Brewers then extremely wealthy; whereas, now it is much otherwiſe, though there is not near the number in the trade that were then.

But now, as to the benefit which may ariſe to the revenue of this kingdom from the encouragement and improvement of the Brewing trade of it: The ſtrong Beer and Ale imported here from England laſt year, amounted to near 54,000 barrels, of which thoſe of ſtrong Beer, called Porter, were not leſs than 53,000, for the importation has been encreaſing every year for ſome years paſt. For theſe 54,000 barrels about £56,700, Iriſh money, has been ſent from this kingdom, at 21s. Engliſh, a barrel, which is what the importing Iriſh merchant only pays for it, though ſold for perhaps 30s. for conſumption in England, as he has the benefit of the drawback or bounty in England, upon exportation from thence; ſo that what with £9,000 being the freight thereof, at 20s. a tun, as alſo the coſt of inſurance, and other charges, as for butts, hogſheads, barrels, &c. not a leſs ſum than £70,000 is ſent from this unfortunate kingdom, and muſt increaſe if not prevented by brewing better liquor here.

Digitized by Google

The duties of Exciſe and Cuſtom, then, upon the quantity ſo imported, according to the preſent method of rating it on the contents of the Engliſh barrel, which being ſome ſmall matter under 1s. 8d. a barrel, amounts to very near, but not quite, £4,500 per annum; (which imported Beer is not liable to any Inland Exciſe) whereas, the duty upon the like quantity manufactured here, which, from the late alteration made in the meaſurement of the gallon, reſpecting the additional duties, and the loſs of Exciſe thereby, is at the rate of 4s. and ſome ſmall fraction of a halfpenny, per barrel, would amount to upwards of £10,800; ſo that in this caſe, the increaſe to the revenue of the kingdom would be £7,200, which would increaſe with the conſumption; beſides the increaſe in the revenue (and no inconſiderable ſum) by the duty on the additional quantity of hops uſed in ſuch brewing, which would be ſupplied from England. And then whatever detriment the prevention hereby of the importation of ſuch Engliſh malt liquor might be to ſome individuals in England, it would be no loſs, nay, it would be a ſaving to the revenue thereof, as not only the whole Exciſe

Digitized by Google

Exciſe thereon, being 8s. a barrel, is drawn back upon the exportation of theſe liquors, but 1s. premium given upon every barrel ſo exported, when barley is at 24s. a quarter, or under.

It has occurred to ſome perſons (if it could be done without injuring his Majeſty's hereditary revenue, which ſhould never be infringed whilſt we regard the preſervation of the conſtitution of this kingdom; an aſſertion which may ſeem ſtrange to ſome, yet is moſt certainly true,) in order to encourage the Brewers, to take off ſome of the duties upon malt liquors, and to lay an equal portion upon malt. This, on the other hand, has been objected to, as it might be ſubjecting the country gentlemen to the Exciſe laws; but there is ſuch a duty in England without any ſuch inconvenience, for by the Act which induces it there, a compoſition may be made for it; and ſo it might be here.

It is true, the Brewers of this kingdom have lately had a very great advantage in the alteration which has been made in the meaſure of our gallon, to wit, from 217 $\frac{6}{10}$ to 272 $\frac{1}{4}$ cubical inches, ſo far as it reaches, which is only to the

Digitized by Google

Additional Duties, not to the *old Exciſe*, it being the King's *Hereditary Revenue*, and not to be infringed without his previous conſent; the hiſtory of which alteration is as follows.

Sir James Shean and partners, to whom, and ten others, the Revenues of this kingdom had, in the year 1676, been farmed at the yearly rent of £240,000, having obſerved that the gallon by which their predeceſſors * had received the duty of exciſe, did contain 272 $\frac{1}{4}$ cubical inches, when, at the ſame time, the common gallon ale meaſure, made uſe of through the kingdom, and which was authorized and ſealed by the ſeveral clerks of the market, did conſiſt of no more than 217 $\frac{6}{10}$ cubical inches, being juſt $\frac{1}{5}$ of the gallon by which they received the duty; and this being a loſs to the *Farmers*, upon enquiry how the law was as to this point, they found that by an Iriſh act, 28 Hen. VI. c. 3. it is enacted, "That there ſhall be but one meaſure throughout the kingdom, that is to ſay,

* To wit, John Forth, of London, alderman, to whom, and ten others, the ſaid revenues had before, in the year 1669, been farmed for ſeven years, at the yearly rent of £219,500, as appears by the deed in the *Rolls*.

the

Digitized by Google

the gallon, the pottle, the quart, the pint, and the half-pint, for meaſuring wine, ale, and other liquors;" but it does not mention what the contents of the gallon ought to be.

That in another Iriſh act, 7 Will. III. c. 24. there is a gallon for meaſuring corn appointed, containing 272 $\frac{1}{4}$ cubical inches, which is anſwerable to the Wincheſter meaſure; this meaſure was to remain in the Exchequer for a ſtandard.

The 10 Hen. VII. c. 22. makes all the laws in force in England to be ſo in Ireland, the *Farmer* then enquired how at that period the gallon was aſcertained in England, which was as follows, by the 51 Hen. III. ſtat. 2. the gallon was thus ſettled, an Engliſh penny, called a *ſterling round*, and without clipping, to weigh 32 wheat corns in the midſt of the ear, 20 pwts. to make one ounce, 12 ounces one pound, and 8 pounds one gallon of wine, and 8 gallons of wine to make one *London* buſhel, and 8 buſhels one quarter.

In the 12 Hen. VII. c. 5. Eng. all the meaſures in England were called in, and a new ſtandard meaſure was erected; and as before the ſaid ſtat.

the

Digitized by Google

the gallon was to contain 8 pounds of wine, the gallon thus eſtabliſhed was to contain 8 pounds of wheat, of Troy-weight; and as 8 pounds of wine put into a cavity that ſhall juſt receive it, and no more, is to another cavity that ſhall contain 8 pounds of wheat, ſo is $217\frac{6}{10}$ cubical inches, the contents of 8 pounds of wine, to $272\frac{1}{4}$ cubical inches, the contents of 8 pounds of wheat.

Thus the *Farmers* found out the contents of the liquid gallon in England in the 10 Hen. VII. and at all times before; and as the Iriſh uſed that gallon in the common ale meaſure, and as the Engliſh Act of 12 Hen. VII. was not made an Act in Ireland, they conſidered the gallon containing $217\frac{6}{10}$ cubical inches, as the only legal ſtandard meaſure in Ireland, and upon a controverſy heretofore between the *Farmers* of the Revenue, when it was ſet to farm, and the Brewers, the matter was debated at a Council board, who gave their opinion in favour of the gallon $217\frac{6}{10}$ cubical inches.

The practice of taking the duty of Exciſe upon Beer and Ale, by the ſmall gallon of $217\frac{6}{10}$ cubical inches, continued until the 11 & 12 Geo. III.

c. 1.

Digitized by Google

c. 1. when the legiſlature, upon conſidering the act of 12 Eliz. c. 3. and the ſaid ſtatute, 7 Wil. III. c. 24, which mention the ale gallon as containing 272 $\frac{1}{4}$ cubical inches, enacted in the money bill, that the Exciſe ſhould be taken by the gallon containing 272 $\frac{1}{4}$ cubical inches. The difference, then, between 217 $\frac{6}{10}$ and 272 $\frac{1}{4}$ is a fifth part, ſo that the Crown loſes almoſt a fifth part, or near 1s. of the additional duty formerly received, but it is in this only, for the alteration is not uſed in taking the *Old Exciſe*, (although it be claimed by the Brewers) for the reaſons I have mentioned before *.

I am

* When Humphry French was lord mayor, an Act paſſed, 9 Geo. II. c. 19. §. 1. making the Dublin Brewers barrels to contain 40 gallons, and the half barrels 20 gallons, according to the 217 $\frac{6}{10}$ cubical inches, which accounts for the above alteration, that each gallon of the barrel of 32 gallons ſhould contain 272$\frac{1}{4}$ cubical inches; for 32 gallons of the latter are exactly equal to 40 gallons and ſix tenths of the former dimenſions.

The Dublin Society once had the moſt important object of encouraging by premiums or bounties the improving the malt liquors of the kingdom, which, at the ſame time, would alſo much promote its agriculture, (the primary cauſe of that noble inſtitution,) greatly at heart, as their then proceedings will ſhew; but a recent rage

Digitized by Google

I am convinced, if the Revenue laws of this kingdom were now to be collected, contracted, and properly digeſted, and every law by which a forfeiture, or a penalty might be incurred, were to be promulgated as publickly throughout the kingdom, as poſſible, it would be productive of much advantage to the Revenue, not only in the prevention of many frauds, but the ſaving of a conſiderable portion of the expences attending the many legal proſecutions on account thereof. The collections of ſuch of theſe laws as had been made antecedent to the 33 Geo. II. c. 10. by which the number mentioned in the ſtatute of the 31ſt. of the ſame reign, c. 6. with theſe ſtatutes, and the ſeveral laws ſince made, form at this day an abſolute maſs of contradiction, confuſion, and perplexity. And there is not a ſeſſion of parliament in which there are not as many new Acts, or clauſes for Acts, propoſed as there are under officers, who wiſh to have as little trouble in their

rage in a few (who ſeldom fail to attend, and influence others) for certain manufactures which we cannot export, (I need not ſay more) hath ſo much engroſſed their attention of late, that *Agriculture* is become too much but a ſubordinate conſideration; and the reclaiming the *Waſtes* of the kingdom, (many millions of acres) thoſe inexhauſtible mines of population, wealth, and ſtrength, (of which an Earthquake, or ſome ſuch ſpecial viſitation of Heaven, only could deprive us) almoſt totally ſlighted.

employments

Digitized by Google

employments as poſſible. It would be well worth while to pay generouſly ſome gentleman of the bar to complete what I have here mentioned againſt the next ſeſſion of parliament.

And now to conclude; the moſt honourable and reſpectable liſt of ſubſcribers to theſe my attempts, cannot but make me a little vain; yet I tremble for their ſucceſs, and, with great humility, crave leave to hope, that whatever they may fall ſhort of any expectations from them, that the moſt favourable indulgence of my readers will conſider, that they are the firſt of the kind in this kingdom, nor have I met with, or ever heard of any upon the ſame plan even in England; as alſo that the well-known multiplicity of buſineſſes in which I have been all along engaged (perhaps exceeded by none that ever was of the ſphere I am in) will be kindly taken into the account.

As to the omiſſions in the body of the work, which are ſupplied at the end of it, the ſearching for the Rules of the Court was very laborious, as the office books were not indexed or alphabetted (as it is called) for near ſixty years after the time

Digitized by Google

from which I took my ſearch; and after the firſt volume had been printed, upon a ſecond ſearch, (which not till then occurred to me was neceſſary) I found that ſome had been omitted in the Indexes, or miſ-indexed,, and one new one after made. But in order to make amends the beſt way I can, I have, after the *general* Index to the work, given *a particular* ſhort one of all the Rules only, of the Revenue ſide of the Exchequer, which will be very ſatisfactory to the Court, and the Practitioners. Then, other matters occurred as worthy of inſertion ſince the firſt volume was printed, and as the work is divided into chapters, they could not then be inſerted in thoſe to which they properly belonged.

It is alſo requeſted, that on receipt of the two volumes, the errata of the preſs (ſuch as are material, for which I muſt for the ſame reaſons alſo plead for indulgence) may be corrected with a pen; half an hour might do it effectually.

But here I cannot help obſerving, that notwithſtanding the contents and propoſals had been not only a conſiderable time advertiſed in ſeveral of the publick papers, but poſted up in the halls of

Digitized by Google

of the Four Courts, and in ſeveral of the publick Coffee-houſes in the city, yet, not even a ſingle Merchant, nay more, not a Revenue Officer, ſave the Commiſſioners, their two ſecretaries, and about four more, appears in the liſt of ſubſcribers, although the work ſo eſpecially appertaineth to them and their reſpective buſineſſes.

Digitized by Google

Digitized by Google

CONTENTS.

VOL. I.

CHAP. I.

Page

Of the Origin, Juriſdiction, and Diviſion of the Exchequer - - - 1

CHAP. II.

Of the ſeveral and reſpective Officers belonging to the Exchequer, both ſuperior and inferior - - - 9

CHAP. III.

Of the publick Revenue of Ireland - 28

CHAP.

Digitized by Google

CHAP. IV.

Page

Of the King's Rents in Ireland, and the ancient and present Method of collecting them 31

CHAP. V.

Of the Customs and Impost Excise, and Additional Duties, on Goods imported and exported, and the Manner of collecting and accounting for them - - - 60

CHAP. VI.

Of Prizage and Butlerage - - 74

CHAP. VII.

Light-house Duty - - - 80

CHAP. VIII.

Of the Inland Excise, Ale, &c. Wine, &c. Licences - - - 83

CHAP. IX.

Of Hearth-money - - - 89

CHAP.

Digitized by Google

CHAP. X.

Page
Of other Inland Additional Duties - 91

CHAP. XI.

Of Seizures, Forfeitures, and Fines - 97

CHAP. XII.

Of the Manner of paſſing Collectors Accounts 99

CHAP. XIII.

Of Fines and Amerciaments, and forfeited Recognizances; and their Eſtreats 102

CHAP. XIV.

Of the Proceſs which iſſues to the ſeveral Sheriffs, called the Proceſs of Green Wax 128

CHAP. XV.

Of Profits of the Hanaper, Poſt Fines, Cuſtodiam Rents, Firſt Fruits, Profits upon Faculties, and Twentieth Parts - 135

CHAP.

Digitized by Google

CHAP. XVI.

Page

Of Waifs, Eſtrays, Goods of Fugitives and Felons, Deodands, Wrecks, Treaſure-trove, and Gold and Silver Mines - 141

CHAP. XVII.

Of Eſcheats and Forfeitures - 150

CHAP. XVIII.

Of Lands purchaſed by Aliens - 159

CHAP. XIX.

Of Forfeitures in Mortmain - 161

CHAP. XX.

Of the Manner of paſſing Sheriffs Accounts 165

CHAP. XXI.

Of the Forfeitures in this Kingdom by the Rebellion in 1641 - - - 187

CHAP.

Digitized by Google

CHAP. XXII.

Page

Of the Forfeitures in this Kingdom by the Rebellion in 1688 - - - 229

CHAP. XXIII.

Of Informations in the Exchequer - 252

CHAP. XXIV.

Of Informations in this Court on Goods ſeized, otherwiſe ſtyled in Rem - 260

CHAP. XXV.

Of Informations before the Commiſſioners or Sub-commiſſioners of Exciſe - - 273

CHAP. XXVI.

Of Debts due to the King, and his Remedies for Recovery of them - - 287

Digitized by Google

CHAP. XXVII.

Page

Of the several Remedies for the Recovery of the King's Rents - - - 314

Digitized by Google

CONTENTS.

VOL. II.

CHAP. XXVIII.

Of Offices or Inquisitions - - Page 1

CHAP. XXIX.

Of the Subject's Remedy against the Crown by Petition of Right, Monstrans de droit, *and Traverse* - - - - 13

CHAP. XXX.

Of Custodiams - - - - 25

APPENDIX.

No. 1.

The Oaths of the Officers of the Court of Exchequer, and some others taken from the Red Book of the Exchequer - 47

No. 2.

The Commissioners of the Revenue's Patent 73

Digitized by Google

No. 3.

Page

The Powers granted by Law to the different Boards of Exciſe and Cuſtoms reſpectively, and what particular Branches of the Revenue of Ireland fall properly under each Board - - - 95

No. 4.

Of the Down and other Surveys - 112

No. 5.

The Materials to be ſought for on any Queſtion about Lands forfeited on the Rebellions in 1641 and 1688 - - 118

No. 6.

A Report of ſome Determinations in this Kingdom and in Great-Britain upon the forfeited Eſtates in 1641 and 1688 - 130

No. 7.

A Caſe determined in the Court of Exchequer of Ireland in the year 1768, on the Poundage

Digitized by Google

Page

age Fee arising to the Vice treasurer of Ireland on Money raised, with an Account of the Poundage Fees claimed by this Officer and the Clerk of the Pells, and the late Resolutions of the House of Commons for addressing his Majesty to grant them certain Salaries in lieu of Poundage Fees 198

No. 8.

Of the Constitution of Ireland with regard to the Making of Laws - 223

No. 9.

The Manner of passing the publick Accounts before the House of Commons, and the present State of the publick Accounts 237

No. 10.

An Establishment or List containing all the Payments to be made for Civil List Affairs for the Kingdom of Ireland, dated 2d *of* March, 1761, *and commencing* 25th Oct. 1760, *the time of his present Majesty's Accession to the Throne* - - 242

No. 11.

Digitized by Google

No. 11.

Page

An Abſtract of the Hereditary Revenue and Additional Duties for two Years, from Lady day 1773 *to Lady day* 1775 252

No. 12.

A State of the Eſtabliſhment and other Charges of Government for two Years, the Civil Liſt ending the 25th *and the Military ending the* 31ſt *of* March, 1775, *together with the Payments made by the Vice treaſurer, and the Arrears remaining unſatisfied - - 254*

No. 13.

A general State of the National Account for two Years, from Lady day 1773 *to Lady day* 1775 - - 257

No. 14.

The State of the Paſturage Rent of his Majeſty's Park, called the Phœnix-park, and of Port-corn Rents, which upon the Augmentation

Digitized by Google

Page

Augmentation of the Chief Governor's Allowance, in the year 1763, 3 Geo. III. *was no longer to be in their Receipt, but to be collected by the Commiſſioners of his Majeſty's Revenue, in like manner with his other Rents* - - 259

Select Writs, Entries, and Pleadings 279

Addenda - - - 341

N. B. Lord Chief Baron Parker's Reports of Revenue Caſes in the Exchequer in England having appeared ſince the two Volumes of this Work were finiſhed, and it being apprehended that a few points therefrom may be acceptable, they are accordingly inſerted after page 345 in the ſecond Volume.

*** For the Errata ſee the End of the ſecond Volume.

A TREA-

Digitized by Google

Digitized by Google

A

TREATISE

OF THE

EXCHEQUER AND REVENUE

OF

IRELAND.

CHAP. I.

Of the ORIGIN, JURISDICTION, and DIVISION of the EXCHEQUER.

IT is not deſigned in the following treatiſe to enter into a diſquiſition concerning the ancient conſtitution of the Exchequer * in England; or to ſhow how it was formed from, and agreed with, that of Normandy: thoſe who are deſirous of receiving information on that ſubject will find their curioſity amply gratified in the laborious and learned reſearches of Mr. Madox, in his hiſtory of the Court of Exchequer.

* The common and moſt probable derivation of the Name is from the old French word Eschequier, which ſignifies a Chefs-board, or Chequer-work; and becauſe a cloth of that kind was laid upon the table, upon which the accomptants told out the King's money, and ſet forth their accounts, it was called the Court of Exchequer. Madox 109.

Digitized by Google

Court of Exchequer in Ireland, formed from that of England.

It is sufficient to observe, that the Court of Exchequer in Ireland, which is one of the four superior courts at Dublin, was formed after the Exchequer in England, probably about the 12th year of the reign of King John, viz. A. D. 1210, at which time that King caused all the laws and customs of England to be established, for the future, in Ireland; as appears by a charter of Henry III. beginning with these words; "Rex, &c. Baronibus, militibus, "& omnibus libere tenentibus L. salutem. Satis, ut cre- "dimus, vestra audivit discretio, quod quando bonæ me- "moriæ Johannes, quondam rex Angliæ, pater noster, venit "in Hiberniam, ipse duxit secum viros discretos & legis "peritos, quorum communi consilio, & ad instantiam Hi- "bernienſium, statuit & precepit leges Anglicanas in Hiber- "nia, ita quod leges eaſdem, in scripturas redactas, reliquit "sub sigillo suo ad scaccarium Dublin."

Co. Litt. 141. b. 7 Co. 22. b. Calv. case.

and agrees with it in its business, &c.

And as the Exchequer in Ireland was formed from that of England, so it agrees with it pretty much, as well in the names and duty of its officers, as in its business and practice; being, like that, instituted to order and determine the rights and revenues, and to recover the debts and duties due to the crown.

Division.

According to the usual division, this Court consists, as it were, of two parts; whereof the first is called the judicial or superior part; and the other, the receipt or inferior part of the Exchequer.

Judicial or superior part.

The judicial or superior part of the Exchequer is conversant, especially, in the judicial hearing and deciding of all causes appertaining to the King's coffers; and was anciently called, *Scaccarium computorum*. And this part of the Exchequer is a Court of law and equity.

The

Digitized by Google

A Court of law.

The Court of law, or plea ſide, is held, after the courſe of the common law, before the Barons. And here the plaintiff ought to be farmer or debtor to the King, or ſome way accomptant to him. And in this Court the Attorney general brings his information for any matter touching the King's revenue. And the leading proceſs is either a writ of Subpena, or *quo minus*.

And a Court of Equity.

The Court of equity is held before the Treaſurer, Chancellor, and Barons, but uſually before the Barons only. The proceedings are by Engliſh bill, and in a great meaſure agreeable to the practice of the High Court of Chancery. And the plaintiff muſt here likewiſe ſet forth that he is debtor or farmer to the King. In this Court the clergy uſually exhibit bills for the recovery of their tythes. And here the Attorney general brings bills for any matters concerning the revenue. And any perſon grieved in any cauſe proſecuted againſt him in behalf of the King, may bring his bill againſt the Attorney general to be relieved in equity.

Rule as to proceeding againſt the Attorney gen.

And by a ſtanding rule in the equity ſide of the Court upon filing any bill againſt the Attorney general to be relieved againſt any information, ſcire facias, or other matter, he ſhall not be ſerved with a ſubpena to anſwer, but ſhall be attended with an atteſted copy of the bill, and an order deſiring him to anſwer in four days after ſuch ſervice; which order the Chief remembrancer is to enter of courſe. And if the Attorney general ſhall fail to anſwer within that time, upon affidavit made of ſuch ſervice and motion thereupon, an order ſhall be granted to ſtay proceedings, until anſwer or further order of the Court. And his anſwer is uſually ſworn to.

Digitized by Google

And the Attorney general may call upon any that are intereſted in the cauſe, or any officer or others, to inſtruct him in the making of his anſwer, ſo as that the King be not prejudiced thereby.

By fiction all perſons may ſue here. 3 Blackſt. Plowd. 218. Dyer 328.

But now, by a fiction, all kinds of perſonal actions may be proſecuted by any perſon in this court. For as all the officers and miniſters of this court have, like thoſe of other ſuperior courts, the privilege of ſuing and being ſued only in their own courts, ſo alſo the King's debtors and farmers, and all accomptants of the Exchequer, are privileged to ſue and implead all manner of perſons in the ſame court that they themſelves are called into. So that by the ſuggeſtion of privilege, any perſon may be admitted to ſue in the Exchequer as well as the King's accomptant; and the ſurmiſe of being the King's debtor is become mere matter of form and not traverſable. And the ſame holds with regard to the equity ſide of the court; for there any perſon may file a bill againſt another upon a bare ſuggeſtion that he is the King's accomptant.

What actions muſt be brought here. Hard. 193.

Every action, which concerns the King's revenue immediately, muſt be ſued in this court; and if brought in another court will be removed hither. As where an ejectment is brought by a perſon, whoſe title is under an extent out of this court, for debts in aid. So if a man be outlawed in a civil action, and lands in his poſſeſſion be extended, and a third perſon who claims a title to them brings his action, it muſt be in this court.

Hard. 176.

Prec. Cha. 153. 2 Vern. 426. J. C

So where an extent in aid was taken out by the King's farmer of the hearth-money againſt his own debtor, againſt

Digitized by Google

againſt whom a commiſſion of bankruptcy was before awarded, and the aſſignees under the commiſſion brought their bill in Chancery to ſet aſide the extent in aid; the bill was diſmiſſed, for that the court of Chancery had no juriſdiction in caſes of this nature, which were only proper for the court of Exchequer, from which the extent iſſued, and where it was examinable.

So the officers of the revenue ought to be ſued in this court for what they do in the execution of their office, and the court will remove an action, commenced in another court, againſt an officer, for ſeizure of a ſhip, though no information for the ſhip be yet filed. Bunb. 34.

So if trover be brought in another court againſt a cuſtom-houſe officer, for tea and other goods ſeized by him, and condemned, and other articles are thrown into the declaration, to give colour to the action there; the court of Exchequer will remove the action. Bunb. 309.

But where an officer of cuſtoms ſeized two cables, one of which was condemned and forfeited, and the owner brought treſpaſs in B. R. againſt the officer for taking a large quantity of cordage generally, it not appearing but that the action was brought for that cable only which was not condemned, the court of Exchequer would not remove the action. Bunb. 306.

And where a perſon was fined and impriſoned by the Commiſſioners of Exciſe in England, and brought his action for falſe impriſonment in B. R. the court of Exchequer would not remove the action, becauſe it did not immediately concern the revenue of exciſe, but was a penalty impoſed for an offence committed in it; and ſo belonged Hard. 193.

Digitized by Google

belonged no more to the court than other like caſes ariſing upon fines and impriſonments.

Juriſdiction of the court as to receiving pleas of diſcharge. Somers arg. 22.

It appears that formerly the juriſdiction of this court was very defective, in what ſeemed abſolutely requiſite for the doing juſtice to the ſubject, who, upon accounting, was put to his petition for a writ or letter of the great or privy ſeal, for juſt and reaſonable pleas by way of diſcharge. But by the 5 Ric. 2. c. 9. Eng. it is ordained, "that the Barons ſhall from thenceforth have full power to hear every anſwer of every demand made in the Exchequer; ſo that every perſon impeached, by himſelf or by any perſon, ſhall be received to plead, ſue, and have his reaſonable diſcharge, without tarrying for, or ſuing, any writ, or other commandment."

The different rolls of the court.

In general the buſineſs and acts of the court of Exchequer were anciently entered or recorded in ſeveral rolls; the principal whereof, beſides the plea rolls, were the *Rotulis Annalis*, or great roll of the Pipe, and the *Memoranda*.

The great roll of the pipe. Madox. 618.

Amongſt the records of the Exchequer, the great roll of the pipe muſt be placed firſt, by reaſon of its pre-eminent dignity. It was and is the moſt ſtately record in the Exchequer, and the great medium of charge and diſcharge of rents, ferms, and debts due to the Crown. Into it the accompts of the ancient royal revenue were entered through divers channels. And the authority of it was ſo great, that when debts had been put in charge there, they could not be diſcharged unleſs by judgment or award of the chief Juſticiary, or of the Treaſurer, the King's Chancellor, or his Council or the Barons.

The

Digitized by Google

The records or bundles made up by the two Remembrancers of the Exchequer, have been uſually called *Memoranda* or the Remembrances. A Remembrance was anciently wont to be made for every year in each of the Remembrancer's Offices. In thoſe *Memoranda* there was anciently entered great variety of buſineſs; for inſtance, the King's writs and precepts of many kinds, relating to revenue tenures, commiſſions of Bailiwicks, cuſtodies, ferms, &c. preſentations and admiſſions of officers of the Exchequer, &c. pleadings and allegations of parties, judgments and awards of the Court, recognizances of debts, and conventions of divers kinds, accompts and views of accompts; with ſeveral acts relating to accomptants; inquiſitions of ſheriffs, eſcheators, &c. advents of ſheriffs, eſcheators, &c. and in general all thoſe things which were compriſed under the term, *Communia*, or common Buſineſs.

The Memoranda or Remembrancers. Madox 619.

The other part of the Exchequer, called the receipt of the Exchequer, or the inferior Exchequer, or Treaſury, is properly employed in the receipt and payment of money; and in England this is a diſtinct court and wholly under the Treaſurer. And if any orders are fit to be aboliſhed in the Receipt, or any new orders to be made, it is done by the Lord Treaſurer, and uſually with the concurrence of the Chancellor and under Treaſurer. If the King thinks fit to command, by privy ſeal, that any new order or method ſhould be obſerved in any part of the receipts, it is uſually directed only to the Treaſurer, and the Chancellor, and under Treaſurer. And if it be thought proper that it ſhould be publiſhed and enrolled in the Court of Exchequer, to the end that all officers and accomptants might the better take notice of it, the Lord Treaſurer

The receipt of Exchequer or inferior Exchequer. Somer's arg. 54. &c. Madox 179.

Digitized by Google

Treaſurer, and Chancellor and under Treaſurer come into the court of Exchequer, and the Treaſurer commands it to be publiſhed and enrolled, together with his own aſſent to it, and the aſſent of the Chancellor and under Treaſurer; but no notice is taken of the Barons in any part of the buſineſs.

The Barons have no power over it. Somers argument. 5 Mod. 46, 62.

It was determined by Lord Somers, on a writ of error brought in the Exchequer-chamber, on a judgment in the Exchequer in England, in the caſe of Hornby, &c. againſt the King, commonly called the bankers caſe (tho' contrary to the opinion of all the Judges, except C. J. Treby) that the Barons of the Exchequer could not, upon the prayer or petition of a grantee of any branch of the revenue to them immediately, order the Treaſurer or Chamberlain to pay out of the receipts of the Exchequer the arrears or growing payments; but that ſuch grantee muſt reſort to his petition of right; for that their power over the King's treaſure is only *in tranſitu*, and that the law has intruſted the King himſelf only with his treaſure, when once it comes into his coffers.

Iriſh treaſurer accomptable anciently to the Exchequer in England. Madox 633.

It appears from many inſtances mentioned by Madox, that the King's Treaſurer in Ireland, in the earlieſt times, accounted at the Exchequer of England for his receipts out of the King's treaſure at the Exchequer of Dublin, by the counter-rolls of the latter Exchequer exhibited at the former.

And King Edw. I. in the 21ſt year of his reign, commanded that for the future the accompts of Gaſcony and Ireland, ſhould be rendered yearly at the Exchequer of England, before the Treaſurer and barons there; viz. the former

Digitized by Google

former by the conſtable of Bourdeaux, and the latter by the Treaſurer of Ireland.

CHAP. II.

OF THE SEVERAL AND RESPECTIVE OFFICERS BELONGING TO THE EXCHEQUER, BOTH SUPERIOR AND INFERIOR.

THE officers of the Exchequer may be diſtinguiſhed into thoſe of the ſuperior Exchequer, and thoſe of the inferior Exchequer. Officers of the Exchequer diſtinguiſhed,

The officers of the ſuperior Exchequer, are as follow. Into thoſe of the ſuperior.

The LORD HIGH TREASURER.

He is the third great officer of the Crown in Ireland, and the higheſt officer both of the ſuperior and inferior Exchequer, and his office is as ancient as the eſtabliſhment of the Engliſh government here; he was in all ancient writs and records called, Treaſurer of the Exchequer. He is the chief judge in all cauſes, that are inſtituted by Engliſh bill, in the chancery or equity ſide of the court. And by 10. H. 7. 1. it is enacted, that the Treaſurer of Ireland, ſhould have as ample power in all things belonging to his office, as the Treaſurer of England; as to make cuſtomers, comptrollers, farmers, and other officers, accomptants for the greater increaſe of the King's revenue in Ireland; and that he ſhould every year make a declaration of his accompt of the revenue before the Barons of the Exchequer, and before ſuch of the King's Council there, as ſhould be appointed by the King's Lieutenant Lord high treaſurer.

Digitized by Google

or deputy; the ſame declaration to be certified into the Exchequer in England: and there the accompt to be determined before the Barons. But notwithſtanding this act, the Lord Treaſurer enjoys very few of the privileges, which belong to his office. For the Vice Treaſurer has the receiving and iſſuing of all the revenues, both annual and caſual; and all the ſaid offices are granted by the Chief Governors for the time being, by their own warrants, and not by the warrant of the Lord Treaſurer.

The CHANCELLOR of the EXCHEQUER.

Chancellor of the Exchequer. Madox 139, 580. 4 Inſt. 104, 115.

In the ancient Exchequer, this was a very great officer. He was one amongſt the Juſtices and Barons that uſually ſat there, and tranſacted ſeveral things in the Exchequer in ſuch manner, as that we may ſuppoſe it to have been anciently part of his duty to aſſiſt there. He ſeems to have been a control or check on the Treaſurer. He has the cuſtody of the ſeal of the court, and is a Judge in matters of equity.

The LORD CHIEF BARON, SECOND, and THIRD BARON.

Barons.

Theſe have judicial power in all cauſes of law, equity, and revenue. In the two firſt they govern themſelves by the common methods of proceeding in the courts of Chancery, King's Bench, and Common Pleas; and in the laſt by rules of their own, and in reſpect hereto the court is always open, as well out of as in Term. They are called Barons of the Exchequer, becauſe in England Barons of the realm were occaſionally ſummoned and ſat there, with other great Officers of State. Upon their entrance into office, they take an oath not to reſpite or protract

Digitized by Google

protract the King's buſineſs, but to give it preference to all others.

The Lord Chief Baron.

He is at this day the chief Judge of the court in matters of law, information and pleas. Therein he anſwers the bar, and all ſuitors; and gives orders for judgment thereupon. He alone ſits as Juſtice of Niſi Prius to try all iſſues joined in this court for the city and county of Dublin; but in his abſence one or both of the other Barons may be Judge or Judges of Niſi Prius. He takes recogniſance for the King's debts, for appearances, and for obſerving of orders. He takes the preſentation of all the officers in court under himſelf, and of the Lord mayor of the city of Dublin. Chief Baron.

The Auditor General.

He is an officer both of the ſuperior and inferior Exchequer. In his office are entered *Verbatim* all * grants of land and offices, whereon any rent is payable to, or ſtipend payable by the King; and from thence he makes out rolls of all the King's rents; with him are lodged all the deeds of aſſignment or purchaſe of lands, &c. out of which any rent or duty is payable to the King; (otherwiſe the rent is always continued in the name of the former proprietor;) and he gives conſtats or certificates of ſuch rents when demanded. In his office are likewiſe lodged all the accounts of the Vice treaſurer, and clerk of the Auditor General.

* It was determined in the caſe of the King v. Daly 12 Dec. 1747, that a book from his office, in which patents and grants of lands are entered, is evidence. But it muſt be proved by a clerk of the office, to be a book belonging to the office, and brought from thence.

Digitized by Google

hanaper, and of money impreſted for any particular uſe or ſervice; which accounts are made up by him, and paſſed by the Commiſſioners of accounts, after they are compared by them with the vouchers, and by the Auditor with the books returned to him by the vice treaſurer, chamberlains, and clerk of the pells. He collects a particular of what rents are unaccounted for, and remain in arrear, and tranſmits the ſame to the Treaſurer's remembrancer, to iſſue proceſs for the levying thereof.

The SURVEYOR GENERAL of LANDS.

Surveyor General.

He has in his office all the ſurveys of the King's lands, *&c.* and if any controverſy ariſe concerning the extent or boundaries of them, he appoints ſurveyors to ſettle the mears, and bounds, and the quantity of ſuch eſtate, together with the yearly value thereof (if required;) for which purpoſe commiſſions are iſſued by order of the Exchequer, on which inquiſitions are taken by a jury; and the eſcheator ſometimes aſſiſts therein.

When a grant is to be paſſed for any eſtate, a warrant from the Lord Lieutenant is directed to him, and to the Auditor general, to make out a particular of the eſtate; the Surveyor general makes out the ſurvey in parchment, and gives the Auditor the particular; and, out of the ſurvey, he aſcertains the rent payable to the Crown; the ſurvey remains with the auditor, and the particular, when examined and ſigned, is tranſmitted to the Lord Lieutenant under both their hands; upon which a warrant is made directed to the Attorney general, to prepare a *fiat* purſuant to ſuch particular.

The

Digitized by Google

The REMEMBRANCERS *(Rememoratores,)* Formerly called Clerks of the Remembrance.

Remembrancer.

Of thoſe there are two diſtinguiſhed by the names of the *King's* or *Chief remembrancer*, and the *Lord treaſurer's*, or *ſecond remembrancer*.

The KING'S REMEMBRANCER, or CHIEF REMEMBRANCER.

King's remembrancer.

He is a principal officer of the court, of great truſt. In his office all bonds for the King's debts, alſo, all recogniſances taken before the Barons for any of the ſaid debts, for appearances, and for obſerving orders, *&c.* are entered or lodged; and he makes out the neceſſary proceſs thereon. All informations upon penal ſtatutes, and upon forfeitures, and eſcheats, either at law or in equity, and the pleadings, and proceedings thereon, are filed in his office. All inquiſitions upon commiſſions out of this court to find out the King's title to any lands, *&c.* forfeited or eſcheated to the crown, (eſpecially to thoſe which were forfeited by the rebellions of 1641 and 1688,) are returned thither: (ſuch as are held upon commiſſions out of the court of Chancery being in the rolls office;) as alſo ſeveral of the proceedings upon the acts of ſettlement and explanation; as the certificates of the commiſſioners for executing ſaid acts, decrees of innocence, *&c.* and likewiſe all inquiſitions on *levari facias*, for the King's debt, and *cuſtodiams* and injunctions, are thereupon made out by order of the court. All engliſh bills in this court, and the pleadings and proceedings thereon remain in his office. He has the entering of all pleas, judgments, *&c.* relating to the King's revenue. In his office are all the books relating to the cuſtoms and exciſe. He makes out proceſs againſt

Digitized by Google

againſt the collectors of the cuſtoms and exciſe, &c. for their accounts, not being by act of parliament directed to be otherwiſe managed than according to the courſe of the court. All diſputes touching irregularities in the practice and proceedings in the court are referred to him by the court. He has in his office all the reducements and abatements of quit rents, which were made by the Lord Lieutenant or other Chief Governor and Council, purſuant to the act of explanation. He has alſo all the reducements of fines by the commiſſioner of reducements. He reads in court the oaths of all the officers, attorneys, and miniſters of the court, when they are admitted; and he alſo reads the oath of the Lord mayor of the city of Dublin, and of all the ſheriffs in the kingdom; writs of prerogative or privilege for officers and miniſters of the court are made by him. All ſums of money brought into court by order are lodged with him, although no ſecurity is required of him, on his entring into office. He has in his cuſtody the red book of the Exchequer.

He has under him five ſecondaries, a filacer, and other aſſiſtant officers. One of the ſecondaries has the office of the law pleas of this department.

The LORD TREASURER'S, or SECOND REMEMBRANCER.

Treaſurer's Remembrancer.

He takes notes of all rules and orders made in the court, relating to the King's revenue, except the cuſtoms, exciſe, and other ſuch revenues which are in the Chief remembrancer's office. He makes proceſs againſt all ſheriffs, eſcheators, receivers, and bailiffs for their accompts. He makes proceſs of *fieri facias* and extent for any debts due to the King either in the Pipe or with the Auditors. He makes a record, whereby it appears whether ſheriffs and other

Digitized by Google

other accomptants pay their *profers* due at Eaſter and Michaelmas. And he makes another record, whereby it appears whether ſheriffs and other accomptants keep their days of prefixion, or days appointed. Into this office are certified all eſtreats of fines, iſſues, *&c.* ſet in the ſuperior courts at Dublin, or at the aſſizes or ſeſſions. And into it are returned all the inquiſitions upon the writs of *levari facias* and of ſeizures, which iſſue thereout for the King's rents, and alſo upon the writs of *levari facias* which iſſue thereout for fines, forfeited recogniſances, and other matters eſtreated into the office; as likewiſe the certificates of ſheriffs as to the goods of felons and fugitives, waifs, eſtrays, *&c.* in their bailiwicks. All the pleadings, orders, and proceedings touching the reducing, exonerating, reſpiting, or diſcharging any of the King's rents, fines, *&c.* are in this office; as are alſo the certificates of the commiſſioners of reducements, which are ſent thither by the Chief remembrancer, on which an order is entered here to be taken to the Clerk of the Pipe to make out the *debet*; which *debet* is to be taken to the treaſury, and, the money being paid there, an acquittance is given, which is to be brought to the Second remembrancer, who thereupon enters an order for the abſolute diſcharge of the ſame. Formerly, tranſcripts of all the grants, that were paſſed by the crown, of any lands, *&c.* were brought in twice every year by the maſter of the rolls, (as it is ſaid) and delivered to the court, and, by the court, tranſmitted into this office, to be compared with the entries in the Auditor's office, leſt any thing ſhould paſs not entered by him; this office being a check to the Auditor's office as to the King's rents. In this office likewiſe were, formerly, enrolled all claims of privileges, franchiſes, liberties, *&c.* licenſes of alienation, pardons of alienation, grants of goods of felons,

fugitives,

Digitized by Google

fugitives, and outlaws, waifs and eſtrays; but this does not appear to have been practiſed ſince Eaſter term 1686.

This officer has, likewiſe, under him two ſecondaries.

The CLERK of the PIPE.

Clerk of the Pipe.

He makes out the yearly roll, which is called the great roll of the Pipe, of all rents and debts whatſoever, that are brought in by proceſs to any of the other officers of the Exchequer, and accounted for in the court; and of all the debts that are in arrear and unanſwered for by the ſheriffs on paſſing their accounts. He alſo writes ſummonſes to the ſheriffs to levy the ſaid debts upon the goods and chattels of the debtors, and if they have no goods, then he draws them down to the Lord Treaſurer's remembrancer to write extents againſt their lands. He makes a charge to all ſheriffs of the ſummons of the pipe and green wax, and ſees that it is anſwered upon their accounts. All orders of diſcharge and reſpite whatſoever of any ſuch rents or debts are entered with him. He makes out cuſtodiams upon ſeizure or ſequeſtration of any eſtate, and outlawry eſtreats upon proceſs from the Treaſurer's remembrancer's office; and, from time to time, renews proceſs for all ſuch arrears as ſtand out upon the roll. He has the drawing and engroſſing of all leaſes of the King's lands. And in this office the ſheriff's *quietus eſt* is prepared, as being the laſt office of account of the proceſs.

The COMPTROLLER of the PIPE.

Comptroller of the Pipe.

He writes out ſummonſes twice a year to levy the farms and debts of the Pipe, which is called the ſecond ſummons, and is in the nature of a *levari* againſt the body, goods, and lands of the debtor; and he alſo keeps a comptrolment

† By an entry in a rule book of the Lord Treaſurer's Remembrancer office, in Mich. term 1661, entitled the diſtribution of the Counties & cities in Ireland to the ſecondaries; and each ſecondary executes the buſineſs for the Counties allotted to him.

Digitized by Google

ment of the pipe or counter roll of all arrears; he is aſſiſting to the clerk of the pipe, and iſſues out the ſecond proceſs of the pipe, by warrant from the clerk of the pipe, and counter-ſigns it with the clerk of the pipe. And he alſo, as well as the clerk of the pipe, takes down what is *nihilled* by the ſheriff on his accounts, and the ſum he charges himſelf with.

The CLERK of the ESTREATS and SUMMONISTER.

Clerk of the eſtreats and ſummoniſter.

Towards the reign of Edward III. the caſual revenue being ſo much increaſed, that the clerk of the pipe could not engroſs all the ſums eſtreated on his annual roll, and many of them being ſmall, and paid on the firſt demand, it was neceſſary to make them part of the annual charge, in the ſame manner as the other annual revenue of the King was; therefore a new officer was created, viz. the clerk of the eſtreats; and inſtead of delivering the eſtreats of the Exchequer and other courts to the clerk of the pipe, they were, thenceforward, delivered to him, and he iſſued a diſtinct proceſs from the ſummons of the pipe, viz. the ſummons of the green wax, which is the firſt proceſs; and hence in this kingdom he is alſo called the *ſummoniſter*.

And this officer, as well as the clerk of the pipe, receives the anſwer of the ſheriff in court; and the *nihils* are to be entered on the great roll.

As clerk of the eſtreats, he has the care of all fines, amerciaments, and caſualties, that ariſe in any of the courts of record; and of the fines and amerciaments that are impoſed in the Exchequer, in the King's remembrancers office and pleas office, or at the aſſizes or ſeſſions, which are brought into the clerk of the eſtreats, by the

Digitized by Google

reſpective officers of the courts, and clerks of the peace; upon which he makes out proceſs; which is tranſmitted under the ſeal of the court to the ſheriffs, to levy ſuch fines, forfeitures, and debts; and this proceſs is in the nature of a *ſcire facias*, which notwithſtanding the ſheriff muſt anſwer in his accounts, or take bonds from the party, to clear ſuch debts in court.

The TRANSCRIPTOR and FOREIGN APPOSER *.

Tranſcriptor and foreign appoſer.

He is an officer in the Exchequer, to whom all ſheriffs and bailiffs repair, to be appoſed by him of their green wax, after they are appoſed of their ſums out of the pipe office; and from thence he draws down a charge upon them to the clerk of the pipe. His buſineſs is to examine the ſheriff's eſtreats with the record, and to aſk the ſheriff what he ſays to every particular ſum therein; he ſends the debts *nihilled* by the ſheriff to the clerk of the pipe, which then being preſumed to be debts that will ſtand out for ſome time, are by him entered on the great roll, and *debets* thereof ſent by him twice a year to the comptroller of the pipe; who ſends out the ſecond proceſs of the pipe; becauſe having already been in proceſs on the ſummons of the green wax, it hath anſwered *magna charta*, 9 Hen. 3 c. 8. by which no ſheriff or bailiff ſhall ſeize lands for the King's debts, ſo long as the preſent

* In Gilbert's treatiſe of the Exchequer, this officer is ſaid to be called *appoſer*, for the ſame reaſon that the ſheriffs accounts of their green wax were called *appoſals*, viz. becauſe the ſheriff was then *apponere*, or to *place* his items to account. And he is called the *foreign appoſer*, becauſe the account on which he ſat, was a *foreign* and diſtant account from that of the great roll, which was carried on by itſelf; or becauſe this caſual revenue, not ariſing out of originals ſent into the court from the Chancery, as the certain revenue did, which was the *original* juriſdiction of the court, but being ſent into the Exchequer by eſtreats out of other courts, was therefore called the *foreign* revenue. See Madox 708.

goods

Digitized by Google

goods and chattels of the debtor ſhall ſuffice, and the debtor be ready to ſatisfy the ſame.

The CLERK of the PLEAS.

Clerk of the pleas.

In his office are all the proceedings at law between party and party, under the ſurmiſe or fiction of the plaintiff's being the King's debtor, and not immediately concerning the revenue.

The SERJEANT at ARMS.

Serjeant at arms.

He is an officer attending this court, as likewiſe the houſe of Commons. To him is directed the laſt proceſs of contempt, on which a ſequeſtration is grounded.

The PURSUIVANT.

Purſuivant.

He was anciently a meſſenger attending the King in his wars, or at the council table, or in the Exchequer, to be diſpatched upon any occaſion or meſſage. All ſheriffs and coroners, and all officers of the court (except the marſhal and uſher) for miſdemeanors, miſ-execution, or non-execution of their office, and all perſons guilty of any ſpecial contempt in this court, are committed to his cuſtody.

The USHER.

Uſher. Madox 722.

It was his duty to keep the Exchequer ſafely, and to take care of the doors and avenues of it; ſo as that the King's records which were laid up there might be in ſafety. It was alſo his duty to tranſmit the writ of ſummons which iſſued out of the Exchequer for the King's debts; that is, to cauſe them to be delivered to the

Digitized by Google

ſeveral ſheriffs to whom they were directed. It is likewiſe his duty at preſent to furniſh the court with books, paper, and ſuch neceſſaries.

The MARSHAL.

Marſhal, 4 Inſt. 107. Madox 727.

To this officer the court committed the cuſtody of the King's debtors during the ſitting of the term, to the end that they might provide to pay the King's debts, or elſe be further impriſoned. Such offices as were found *virtute officii*, and brought into the Exchequer, were delivered to him to be delivered over to the treaſurer's remembrancer. He alſo appointed auditors to ſheriffs, eſcheators, cuſtomers and collectors, for taking their accounts.

But this office and that of the uſher are now exerciſed by the ſame perſon; and yet in the patent to the uſher there is no mention made of the marſhal.

To the officers of the ſuperior Exchequer may be added, as being attendant thereon, the King's Attorney general and Solicitor general.

The ATTORNEY GENERAL.

Attorney general.

He has a ſpecial charge of the revenue. No rent can be diſcharged or abated, but by his conceſſion or conſent. He puts into court, in his own name, informations of concealment of cuſtoms, ſeizures, &c. alſo of intruſions, waſte, and encroachments upon any of the King's lands, and upon penal ſtatutes, forfeitures, &c. He acts in general by *debet*, *conſtat*, or certificate, from the proper officers, in whoſe office the debt or matter, for which the information or bill is brought, is recorded. He prepares the

Digitized by Google

the *fiats* for all patents for lands, eſtates, honours, &c. He is made privy to all manner of pleas that are not ordinary, and of courſe, which ariſe upon the proceſs of the court; and he is an officer of ſuch dignity and confidence, that his confeſſion binds the crown in all ſuits and cauſes wherein he is concerned.

The SOLICITOR GENERAL.

Solicitor general.

He is aſſiſting to the Attorney general in all the matters aforeſaid, as to pleadings in court; and he, as well as the Attorney general, may prepare the *fiats* for patents.

The officers of the Inferior Exchequer, called the receipt of the Exchequer, are as follow:

The LORD TREASURER.

Lord treaſurer.

Of whom mention has been already made amongſt the officers of the SUPERIOR EXCHEQUER, being the Chief officer both of the ſuperior and inferior Exchequer, and of whom, as he now ſeldom acts, the whole buſineſs being done by the Vice treaſurer or his deputy, there is no occaſion for adding any thing more.

The VICE TREASURER.

Vice treaſurer.

He is a principal officer of this part of the court, under the ſeveral appellations of VICE-TREASURER, RECEIVER GENERAL, PAY-MASTER GENERAL, and TREASURER at WAR.

Has the charge of the revenue.

He has the charge of all his Majeſty's revenue, of what nature or kind ſoever, and is to account for the ſame. He or

or his deputy is to ſign all receipts for money paid into the treaſury, and received for him by the teller or caſhier; as alſo all orders and debentures for money paid out. And no acquittance that is not ſigned by the Vice treaſurer or his deputy (except thoſe given by the ſheriffs for debts iſſued in green wax) is or can be a diſcharge to the ſubject for any ſum paid in, *&c.* except where ſome act of parliament, or the King, by letters patent under his great ſeal, ſhall otherwiſe appoint.

Pays the civil and military liſt.

As Vice treaſurer and Receiver he only pays the civil liſt; and what remains, after the payment thereof, is tranſferred by him to the diſcharge of the military liſt, which he pays as Treaſurer at war and pay-maſter.

The civil liſt by debentures.

The civil liſt is paid by debentures made out by the Auditor general, and ſigned by him purſuant to the King's eſtabliſhment, a copy of which is lodged with the Vice treaſurer.

The military liſt by warrants by the Commiſſary general.

The military liſt is paid by warrants prepared by the Commiſſary general of the muſters, and ſigned by the Lord Lieutenant or other Chief Governors, and counter-ſigned by the Commiſſary general, and not by the ſecretary at war, as is uſual in England.

Payments on the head of Concordatum how made.

Payments on the head of the CONCORDATUM * in the civil liſt, are to be on warrants, to be moved for and granted at the council board, and theſe warrants are to be

* This is an annual ſum of £5000, limited in the civil eſtabliſhment, to be paid as ſhall be *agreed*, (from whence it has its name) that is to ſay, by *Concordatums* of the Lord Lieutenant, Lord Deputy, Lords Juſtices, or other Chief Governor or Governors and Council.

And

Digitized by Google

be ſigned by the Lord Lieutenant, or by the other Chief Governors, and a *quorum* of the council; and if the Vice treaſurer exceeds, in his payments or warrants of *Concordatum*, the ſum limited in the eſtabliſhment, he is liable to refund and to make all ſuch overplus payments good to the King.

Civil and military liſts, his general authority for all payments out of the treaſury.

And the general authority for all payments out of the treaſury of this Kingdom, is the eſtabliſhment of the civil and military liſt; which is ſigned by the King, and Lords of the treaſury, and tranſmitted over hither. And the Vice treaſurer cannot pay any warrant that comes to his hands, ſigned by the King, or any warrant of privy ſeal, or warrant under the great ſeal of England, for any ſum or ſums of money not included in the eſtabliſhment, without being liable to have the ſame chequed and diſowned

And this ſum is, in the eſtabliſhment, expreſſed to be for freight, tranſportation, carrying of letters, and other expenſes and rewards; ſea ſervice, repairing and upholding ſufficiently, the King's houſes; maintaining his forts; finiſhing needful undertakings of that kind, begun in apt places but not finiſhed; erecting of more ſtrength of the like nature in other fit and neceſſary places; diet and charge in keeping poor priſoners, and ſick and maimed ſoldiers in hoſpitals; printing, riding, and travelling charges; preſts upon account, and all other payments; amongſt which, the repairs of fortifications, and proviſion of hoſpitals are chiefly to be taken care of; and theſe *Concordatums* are to be every three months certified over to the privy council in England.

And no payment or allowance is to be made by *Concordatums*, but by warrant drawn by the clerk of the council in Ireland, paſſed openly at the council board there, and ſigned by the Lieutenant, Deputy, or other chief Governor or Governors, and by three or more of the officers following, *viz.* the Chancellor, Treaſurer, Vice treaſurer, and Chancellor of the Exchequer, the two Chief Juſtices, Chief Baron, Maſter of the rolls, and Secretary of ſtate; and for default, either by exceeding the ſums limited, by anticipation, or by not obſerving the ſaid direction in every point, all the ſums that ſhall be otherwiſe allowed and paid there, ſhall be ſet *inſuper*, as debts upon the Lieutenant or any other Chief Governor or Governors of Ireland, the under Treaſurer, and all others that ſhall ſign the ſame, to be defaulked, to the uſe of his Majeſty, upon their ſeveral entertainments.

upon

Digitized by Google

upon his accounts; unleſs the payment he makes on ſuch warrant be alſo purſuant to directions in writing from the Lord Lieutenant, or the other Chief Governors, and a *quorum* of the council thereupon.

Not to pay debentures or warrants without entering them with the clerk of the pells.

He is not to pay any debentures or warrants on the civil or military liſt, or any other account, without entering them with the clerk of the pells, and having them counter-ſigned by him; otherwiſe ſuch payments will be diſallowed in his accounts; ſo that he can neither receive or pay without a control; by means whereof the King cannot be defrauded.

To give Exchequer acquittances for all money paid to him.

For all money paid into the treaſury, he or his deputy, is to give an acquittance, which is to be ſigned and entered with the Clerk of the pells, Chamberlains, and Accountant general, and to be delivered to the party paying his money. And this is called an Exchequer acquittance *. And when theſe acquittances are returned by the Accountant general or other perſon, as vouchers, they are to be filed of record with the Auditor general, where they are to remain, and are a charge on the Vice treaſurer.

His accounts to be taken by Commiſſioners.

His accounts are not to be taken by the Barons of the Exchequer, but by Commiſſioners authorized under the great ſeal of England or Ireland. And upon his accounting before the Auditor and Commiſſioners, he delivers in books containing tranſcripts of every individual receipt, and ſum of money by him received; and the clerk of the pells doth the like; which books remain with the

* Formerly, a liſt of theſe acquittances was brought weekly from the treaſury to the Accountant general; but this cauſing great confuſion in the accounts, as to dates, &c. the preſent method is purſued of ſending them to the Accountant general to be entered as they are paſſed.

Auditor

Digitized by Google

Auditor general, as a diſcharge both for the Vice treaſurer and the ſubject who paid his money. He alſo gives the Auditor general a fair tranſcript of all his payments under the ſeveral heads of the eſtabliſhment, expreſſing at large the nature of the payments, and for what time &c. and when the Auditor general has examined and engroſſed his account in parchment, it is brought with the vouchers to the Commiſſioners of accompts, who ſit, and examine and compare the ſame; and they being ſatisfied therewith ſign it.

his quietus.

When his account is thus paſſed, his *quietus eſt* is a duplicate thereof ſigned by the ſaid Commiſſioners, which he keeps; and the other remains with the Auditor general.

The TELLER or CASHIER.

Teller or Caſhier.

He receives all the King's money, and afterwards writes a bill in parchment for the party's acquittance who pays it; which acquittance is tranſmitted to the Chamberlains, who enter and ſign it; and it is then delivered by them to the Clerk of the pells, to be entered and ſigned by him; and is then delivered to the party.

He alſo pays out the King's money upon debentures, and by orders from the Lord treaſurer, and under treaſurer, which are directed by the auditor.

The CLERK of the PELLS.

Clerk of the Pells.

He enters all the teller's bills into a book or parchment roll, called *pellis receptorum*. He ſigns, and enters all acquittances that are given by the Vice treaſurer, and

Digitized by Google

Receiver general or his deputy, for any rent, debt, or ſum of money paid into the treaſury. With him are alſo entered all warrants of debentures, upon which the Vice treaſurer or Receiver general makes any payment; and hereby he is a perfect cheque upon the Vice treaſurer, and ought to be able at any time to give a ſtate of his receipts and payments, and to know what money he has in his hands to anſwer the King's affairs. He returns into the auditors office, yearly, books containing every individual acquittance, paſſed by the Vice treaſurer, and Receiver general, or his deputy for that time; which the auditor compares with the like books returned to him by the Vice treaſurer and chamberlains, that ſo the King may not be prejudiced, but the Vice treaſurer fully charged with all the money received by him during the time for which he accounts.

The CHIEF CHAMBERLAIN and SECOND CHAMBERLAIN.

Chamberlains. Madox 732, Somers arg. 51.

They are ancient and were great officers of the ſuperior Exchequer in England; and ſometimes ſat and acted in perſon, and were numbered with the Barons there. But the office being ſuch as might be executed by deputies the chamberlains by degrees made themſelves uſeleſs, by leaving all the buſineſs to their deputies, and the office itſelf ſunk by degrees to little more than a name. Their buſineſs, at this day, is pretty much the ſame with the Clerk of the pells, as to all receipts and payments into the treaſury; and their books, as well as thoſe of the Clerk of the pells, are tranſmitted yearly to the Auditor, not only to adjuſt the charge of the Vice treaſurer and Receiver general, but to be compared with rent rolls in the auditor's office, whereby he aſcertains what

Digitized by Google

what rents are received, and what remain in arrears, in order to the iſſuing out proceſs for ſuch as remain unpaid.

The AUDITOR of FOREIGN ACCOUNTS and IMPRESTS.

He audits all accounts of money impreſted for the buying of arms, ammunition, and proviſions, and all money iſſued by impreſt for the building of fortifications. Auditor of foreign accounts and impreſts. Madox 729.

He is alſo aſſiſtant to the Commiſſioners for the impreſt accounts, for the examining and making up all foreign or martial accounts or impreſts within the kingdom of Ireland, except the Treaſurer's accounts for the wars. To thoſe ſeveral officers may be added,

The COMMISSIONERS for the TREASURY ACCOUNTS.

They are the lord high Chancellor, the Chancellor of the Exchequer, the lord chief Baron, and the Barons of the Exchequer for the time being, who are authorized under the great ſeal of England or Ireland; and before any three or more of theſe commiſſioners, the Vice treaſurer and Receiver general is to account, formerly but once, but now four times in every year; and they are to examine his accounts, and the vouchers; and to compare them; and, being ſatisfied therewith, are to ſign them: but before his accounts are fully cleared and diſcharged, they are further ſubject to the examination of the treaſurer or commiſſioners of the treaſury of Great Britain. Commiſſioners for the publick accounts.

Theſe Commiſſioners had likewiſe formerly under their inſpection ſeveral other accounts, ſuch as thoſe of the ordnance, the board of works, money advanced by government, Other accounts formerly under their inſpection but now

Digitized by Google

under the Commiſſioners of foreign accounts.

ment by way of impreſts, &c. But they are now confined merely to the treaſury accounts; and all theſe other accounts are made ſubject to the examination of five Commiſſioners, conſtituted for that purpoſe, called the Commiſſioners of impreſts and foreign accounts. But theſe are not properly to be conſidered as officers of the treaſury.

CHAP. III.

OF THE PUBLICK REVENUE OF IRELAND.

AS a preliminary introduction to the preſent ſtate of the revenue of Ireland, it might have been a matter of curioſity to have entered into an hiſtory or detail of the ancient revenues of the crown, the ſeveral branches which compoſed them, and the manner of levying, accounting for, and paying them into the Exchequer. But this ſubject I ſhall leave to the antiquarian, who has abilities and leiſure to make the neceſſary reſearches into the publick offices and ancient records of this kingdom; and ſhall content myſelf with deducing an account of the Iriſh publick revenue, from the reſtoration, (ſoon after which the act of tunnage and poundage and the act of exciſe were made) to the preſent time.

And this publick revenue may now be conſidered as divided into, I. The King's HEREDITARY REVENUE. II. The ADDITIONAL DUTIES granted for the better ſupport of government: And III. the APPROPRIATED DUTIES.

Hereditary revenue.

And I. the Hereditary revenue, ſo called from its being veſted in the King, his heirs and ſucceſſors, and which amounts

Digitized by Google

amounts in groſs, at a *medium* of the laſt 12 years preceding 25th March 1773, to about £640,000 a year, is that which either is the ancient patrimony of the crown; or elſe was granted to King Charles II. by parliament, by way of purchaſe or exchange for ſuch branches of the King's inherent hereditary revenue as were found inconvenient or burdenſome to the ſubject; or perhaps in lieu of forfeitures which the crown was entitled to; the produce of all which belongs to the crown, to be applied, under the conſtitutional truſt, for publick ſervices.

Of what it conſiſts.

Theſe may be conſidered in the following order, viz. The King's rents, cuſtoms outwards and inwards, import exciſe, prizage on wines, lighthouſe duties, ale, wine, and ſtrong water, licences, ſeizures and forfeitures, hearth money; and the caſual revenue, conſiſting of fines, forfeited recognizances, cuſtodiam rents, together with ſome other caſualties, as waifs, eſtrays, goods of felons and fugitives, &c.

How far chargeable and alienable.

The act of re-aſſumption, viz. 11 Wil. III. Eng. makes the crown rents, quit rents, and chiefrys, unalienable; and enacts that they ſhall for ever be and remain for the ſupport and maintenance of the government of this kingdom. The act of 14 and 15 Car. II. c. 18, granting the revenue of ale licences, reſtrains the crown from farming it or charging it with gift, grant, or penſion. And the act of 14 and 15 Car. II. c. 17. granting the hearth money, reſtrains the crown from particularly charging it with grant or penſion. And theſe ſeem to be the only branches of the hereditary revenue which the crown is reſtrained from charging or aliening. See 5 Mod. 46, 54, &c.

II. The

Digitized by Google

Additional duties.

II. The next head to be conſidered are the Additional Duties, which are granted, in aid of the hereditary revenue, for the ſupport of his majeſty's government; and are always granted for two years certain, beginning and ending on the 25th of December; and ſo far as they are granted without ſpecial appropriation, they are granted to the crown under the ſame conſtitutional truſt with the hereditary revenue.

Appropriated duties.

III. The laſt head of the publick revenue are the appropriated duties; which are impoſed for certain particular purpoſes, to which they are ſpecially applied by parliament at the time of granting them; and thoſe appropriations, at preſent ſubſiſting, are, the loan, the tillage, the linen manufacture, the Dundalk cambrick manufacture, the proteſtant charter ſchools, and the Lagan navigation.

Paid as the others into the treaſury.

And theſe duties are paid into the treaſury as all the others are; but it is only for convenience; they are ſeparately accounted for, and iſſued by different warrants; being paid, according to the directions of the ſeveral acts of parliament, to the orders, or on the receipts of the corporations, or private perſons reſpectively intereſted therein, without any warrant ſigned by the government.

CHAP.

Digitized by Google

CHAP. IV.

OF THE KING'S RENTS IN IRELAND, AND THE ANCIENT AND PRESENT METHOD OF COLLECTING THEM.

Rents payable to the King, different kinds of.

THERE are four ſeveral ſorts of rents in Ireland reſerved and payable to the King, to wit, CROWN RENTS, PORT-CORN RENTS, COMPOSITION RENTS, and QUIT RENTS.

Crown rents, what.

The Crown rents are ancient rents reſerved upon grants made by the Crown of their demeſne lands, and lands of inheritance.

Out of what they aroſe.

And the greater part of theſe rents, at this day, ariſe upon grants made of the lands, tenements, hereditaments, *&c.* which formerly belonged to monaſteries, abbeys, priories, and other religious houſes, which, in the reign of King Henry the VIIIth, were either diſſolved, ſuppreſſed, renounced, relinquiſhed, or ſurrendered to his Majeſty; and which, together with the ſcites, ambits, circuits, and precincts thereof, and all the lands, tenements, hereditaments and appurtenances thereunto belonging, were afterwards, by two ſeveral acts of parliament, 28 Hen. 8. cap. 16. and 33 Hen. 8. cap. 5. given to, veſted in, and adjudged to be in the very actual and real ſeiſin and poſſeſſion of his Majeſty, his heirs and ſucceſſors for ever; in as large and ample manner and form as the then late abbots, priors, commanders, and other governors of the ſaid religious houſes had held and enjoyed the ſame; together

Digitized by Google

gether with all and every the rents, ſervices, and rent-ſeek, and all other ſervices and ſuits which were due, to be paid, or done to any perſon or perſons from, or out of the premiſſes, or any part thereof.

Other Crown rents.

And the rents reſerved on all grants from the Crown, of fairs, markets, ferries, and fiſheries, are called alſo Crown rents.

Rents on grants in purſuance of the commiſſions of grace called Crown rents.

The rents reſerved on the grants of the ſix eſcheated counties * in the province of Ulſter, are alſo called Crown rents, and are entered as ſuch in the King's rent rolls.

* There were ſix counties eſcheated or forfeited to the Crown, on the rebellion of the earl of Tyrone and others, to wit, Donegal, Tyrone, Derry, Fermanagh, Cavan, and Armagh. Theſe ſix counties were planted with great judgment by King James the Firſt, on a plan formed by Lord Chancellor Bacon, but much improved by Sir Arthur Chicheſter, afterwards Baron of Belfaſt, and Lord Deputy of Ireland, and who might be ſaid to be the real proprietor. On this plan the lands which were to be aſſigned for planting, were to be ſo aſſigned either to the old chieftains, or inhabitants, or ſervitors of the Crown, (who were the great officers of ſtate, or captains and officers in the army) or elſe to Engliſh and Scotch undertakers; and different allotments were made to each of theſe, and encouragement given to them all, but eſpecially to the firſt, to gain their good-will.

The lands to be planted were divided into three proportions, the greateſt, of 2000 Engliſh acres, the middle, of 1500, and the leaſt, of 1000; each and every county was ſet out into theſe proportions; the one half of it aſſigned to the ſmalleſt, and the other half divided between the other two proportions.

And theſe eſtates were granted by the King to theſe ſeveral perſons to be held by them and their heirs; the undertakers of 2000 acres held of him in capite; thoſe of 1500 by knights ſervice; and thoſe of 1000 in common ſoccage. See Carte's life of the Duke of Ormond, vol. 1. pag. 14, 15, 16; as to what obligations each of theſe were under as to building, planting, with freeholders, &c.

On theſe donations of lands the following rents were reſerved to the Crown, viz. upon every 1000 acres (after three years exemption, and three years at half rent) a rent of 5l. 6s. 8d. from the undertakers and ſuch ſervitors as planted with Britiſh tenants; of 8l. from ſervitors that planted with the Iriſh; and of 10l. 13s. 4d. from the natives, who were not obliged to build caſtles.

And

Digitized by Google

And the yearly amount of the ſaid Crown rents is about £14800 a year.

Crown rents. 14800l. a year.

The Port-corn rent was a kind of rent formerly paid by many of the tenants to the monaſteries and abbeys before their diſſolution, as aforeſaid, by ſervice, or in kind, by *port-corn*, or marts, or by rendering of corn, and other produce of the lands. And it is called *port*, from *porto* to carry, or, *quia ad portam monaſterii jacebatur*. And the ſpecies of corn ſo reſerved, are wheat, bere, malt, and oatmeal; but in one grant beeves are reſerved.

Port-corn rent, what and from whence it ariſes.

And in ſeveral of the grants ſo made by the Crown, after the diſſolution of the ſaid religious houſes, and eſpecially of rectories and tythes, and other the ſpiritual poſſeſſions thereof, this port-corn rent has been reſerved, as well as the Crown rent, or rent in money.

Reſerved by the Crown in ſeveral grants, together with a Crown rent.

And all theſe port-corn rents, which amount to about £400 a year, were, ſhortly after the diſſolution of the abbeys, *&c.* given by the Crown to the Lord Lieutenant, and to certain other great officers in Ireland, to wit, the Maſter of the rolls, the Lord Chief Juſtice and the Lord Chief Baron, and the Preſidents of Munſter and Conaught; and they were accordingly put upon the eſtabliſhment for the ſame, in the 42d year of the reign of queen Elizabeth; as appears by the rolls in the office of his Majeſty's Auditor general, (where thoſe allotted to the Lord Lieutenant are under the title, *ſword*) and are ſaved and confirmed to them by the act of ſettlement in the following words;

Granted to the Lord Lieutenant and other great officers.

"Provided that neither this act, nor any thing therein "contained, ſhall extend to the diſpoſing or altering of any "impropriate

Reſerved by the act of ſettlement to

Digitized by Google

the Lord Lieutenant or other Chief Governor, &c. in right of their places.

" impropriate rectories, or tythes, or rents, now, or lately " enjoyed or poſſeſſed by, or ſettled on, the Lord Lieute- " nant or other Chief Governor or Governors of this " kingdom for the time being, or which at any time have " been, or are now enjoyed, poſſeſſed, or received by the " Lords Preſidents of Munſter and Conaught in right of " their reſpective places, any thing in this act to the con- " trary in any wiſe notwithſtanding.

" And that the Lord Chief Juſtice of his Majeſty's court " of King's bench, the Lord Chief Baron of his Majeſty's " court of Exchequer, and the Maſter of the rolls, or any " other of his Majeſty's officers of this kingdom for the " time being, ſhall and may have and receive ſuch port- " corn of the ſeveral rectories which formerly have been " paid and reſerved."

To be rendered by the grants.

And by the aforeſaid grants, the ſaid port-corn is to be rendered at the principal town in the county named in the patent, on or before the 2d day of February in every year, to ſuch perſon or perſons as the Lord Lieutenant or other Chief Governor or Governors of the ſaid kingdom of Ireland for the time being, ſhall, from time to time, appoint to receive the ſame.

And what the incumbent or other proprietor may, on rendering it, defalk or retain.

But in the ſaid grants there is uſually a clauſe or proviſo, empowering the incumbent, or other proprietors of the ſpiritual poſſeſſions thereby granted, on their producing a bill to the Vice treaſurer, or Receiver general for the time being, teſtifying the delivery of the grain, *&c.* to defalk or retain in their hands, for the ſaid grain, two ſhillings a peck *(modius)*, lawful money of Ireland. And by conſtats from the rent rolls of queen Elizabeth in the Auditor general's office, the number of pecks charged on each denomination,

Digitized by Google

mination, are mentioned; and they are valued at a certain ſum for each peck, as if ſuch ſum was to be received in lieu of the port-corn; and the ſum at which the ſaid pecks, payable out of each denomination, are valued, is the ſame ſum, which, by the ſaid grants, was to be ſo defalked for the port-corn, delivered for ſuch denomination, out of the Crown rent thereof.

The ſaid ſtate officers being ſo entitled, they uſually farmed out the ſaid port-corn to certain farmers, at a certain yearly rent, ſaid to be £200.

Severities uſed by the farmers thereof.

But ſuch farmers having uſed great ſeverities and exactions to the incumbents and proprietors of the ſpiritual livings, a doubt aroſe, when the ſaid port-corn had not been delivered in kind at the times and places appointed by the grants, but had been ſatisfied in money or otherwiſe by agreement with the Chief Governors for the time being, as was uſually the caſe, whether the incumbents or proprietors of the ſaid ſpiritual livings were entitled to defalk any ſum in their hands by virtue of the ſaid grants, although they ſhould bring a bill or note from the perſons entitled to the ſaid port-corn, or the farmers thereof, to the Vice treaſurer or Receiver general, if in truth the ſaid corn had not been actually delivered according to the grants, but ſatisfaction by agreement had been made for the ſame.

And complaints having been made of the ſaid exactions and ſeverities, in order to remove all ſuch complaints and grievances, it was mutually agreed upon,

Digitized by Google

and a * deed executed in purſuance thereof, bearing date the 7th day of March 1698-9, between their excellencies the Lord Duke of Bolton, and the Earl of Galway, the then Lords Juſtices of this kingdom for themſelves, and as far as they could, for the Chief Governors that ſhould be thereafter on the one part, and by Dr. John Bolton for himſelf and the other incumbents or proprietors of the ſaid rectories, (he being by letter of attorney lawfully empowered ſo to do,) on the other part, that for the year ending the ſecond of February then laſt, the ſaid incumbents or proprietors ſhould pay for the ſaid port-corn, to the ſaid Lords Juſtices, the ſum of 5s. 6d. for every *modius grani* reſerved by the ſaid patent, amounting in the whole to 269l. 18s. 3d. as in the ſchedule thereunto annexed is expreſſed; and for every year after, at or before the ſecond of February in each year, five ſhillings per peck, which amounted unto 245l. 7s. 6d. per. annum: And it was alſo further agreed, on behalf of the ſeveral then incumbents, or that ſhould be thereafter, and the proprietors of the ſaid rectories, that none of them ſhould aſk, demand, or defalk any allowance on account of the ſaid corn, or by virtue or colour of their ſaid ſeveral patents, but ſhould pay the ſeveral yearly rents payable to the crown, as aforeſaid, out of the ſaid rectories, without any defalcation or deduction whatſoever, ſaving never-

* The rolls office, Auditor general's office, and council chamber, have been ſearched for this agreement, but it is not be found; but it is entered in a book in the Auditor general's office. But in the year 1761, theſe matters having been laid before the Attorney general, and others of his Majeſty's council, they were of opinion that the Lord Lieutenant, or his farmers cannot ſue for the rents on the agreement of 1698; but that the proceedings muſt be in purſuance of the grants, and for the port-corn; and that, tho' the port-corn payable by the proprietors, is by the eſtabliſhment aſſigned to ſeveral great officers, yet that it ſtill remained payable to the King, and that the proceſs muſt iſſue in his Majeſty's name, for the recovery of any arrears that may be due thereon.

Digitized by Google

theleſs, all their right and title to the ſaid allowance of eighteen pence per peck, as in their reſpective grants and patents are reſerved and expreſſed, in caſe the ſaid agreement ſhould at any time thereafter be broken or made void.

How recoverable.

And this port-corn may be recovered as others his majeſty's rents, (which ſee hereafter,) to wit by diſtreſs, ſeizure, or information. And, in all the grants thereof there is a clauſe, that if the ſame ſhall be in arrear, the King, his heirs and ſucceſſors, may re-enter and take the iſſues and profits thereof, to his and their own uſe, until the ſaid arrear ſhall be fully ſatisfied; and then, and not before, the tenants of the aforeſaid ſpiritual tenures to be reſtored to the poſſeſſion thereof.

Now paid to the commiſſioners of the revenue.

But by the King's letter bearing date the 20th of April 1763, it was directed that the rents uſually accruing to the Chief Governor or Governors of Ireland for the port-corn throughout Ireland, ſhould be no longer paid to the ſaid Chief Governor or Governors for their uſe, but to the Commiſſioners of his Majeſty's revenue from time to time, for the uſe of his Majeſty, his heirs and ſucceſſors. And by the government's warrant dated the 1ſt. of July, in the ſame year, his Majeſty's Auditor general was required to make out one or more particular or particulars of the ſaid rents, and to put the ſame in charge upon his Majeſty's rent rolls, and to make a return thereof to the ſaid commiſſioners in order to be collected by their officers, in like manner as his Majeſty's other rents are collected.

And the Auditor general thereupon returned ſeveral conſtats of charges of port-corn, which appeared to have been

Digitized by Google

been taken from a rent-roll thereof, made in the reign of Queen Elizabeth; which rent-roll is now the only evidence of ſuch rent, where the denominations have not been granted away by the crown.

Compoſition rents, what

The Compoſition rents are certain rents reſerved to the crown upon a compoſition made in the reign of Queen Elizabeth, between her majeſty and the lords and chieftains of Conaught, in lieu of ceſſes, impreſs, and quarterage of ſoldiers.

And how they aroſe.

And the original of theſe compoſition rents was in this manner. Several lands in the province of Conaught and Munſter, and other countries in this kingdom, formerly held by Iriſh cuſtom, and not by tenure, according to Engliſh laws, were charged with heavy ceſſes and taxes, and ſubject to the depredations of men of war; wherefore, at the firſt quieting and ſettling thoſe parts under the Engliſh government, the lords and chieftains of the ſaid provinces and countries petitioned her Majeſty, by her then Lord deputy, to accept from them the ſurrender of all their lordſhips, manors, lands, tenements, and other their poſſeſſions, to the end it might pleaſe her Highneſs, after the ſaid ſurrender ſo made, to grant to them the ſame their lands and poſſeſſions, to hold of her Highneſs, her heirs and ſucceſſors, by ſuch tenures, rents, ſervices, and attendance as ſhould be thought meet and convenient, reſpecting the quantity and quality of the ſaid lands, &c.

Act to enable the crown to make grants of the lands accordingly.

And accordingly an act of parliament was made, in the 12th year of the reign of her ſaid majeſty Queen Elizabeth, by which it was enacted, that patents ſhould be made out to ſuch perſons, as ſhould ſurrender to the Crown

Digitized by Google

Crown their lands, ſo held by Iriſh cuſtom, to be holden of her Majeſty, her heirs and ſucceſſors, for ſuch eſtate, and by ſuch tenure, rents, and ſervices, as ſhould be expreſſed and reſerved in the ſaid letters patent.

Commiſſion to make a compoſition, between Q. Eliz. and the lords of Conaught and their tenants.

And afterwards in the 27th year of the ſaid reign, a commiſſion iſſued giving authority to ſir Richard Bingham then governor of Conaught, and twenty-one other Commiſſioners to make a compoſition between the Queen and the lords and and their tenants of that country, and of Thomond, for a rent certain to be paid out of every quarter of land therein, in lieu of all manner of uncertain ceſſes, cuttings, and other exactions, accuſtomed to be borne to the Queen and her predeceſſors for the martial government thereof; and further the Commiſſion empowered them to do all things as to their diſcretion ſhould ſeem beſt, as well in the ſaid compoſition, as in the diviſions of baronies into manors, and to adviſe all other things that ſhould tend to the general good and quiet of the country, and the good ſubjects of the ſame.

Indentures of compoſition, in purſuance thereof.

And accordingly, indentures bipartite were entered into on the 2d of September following, whereby it appears, 1ſt. that the Lord Deputy Perrot did covenant on behalf of the Queen, that the chieftains, gentlemen, freeholders, and inhabitants, their heirs and aſſigns, ſhould from the date of the ſaid indenture be exonerated for ever from all ceſſes, exactions, cuttings, impoſitions, purveying, catings, finding or bearing of ſoldiers, and from all other burdens, other than the rents, reſervations and charges in the indentures ſpecified, and to be enacted in parliament. In conſideration whereof, the ſaid chieftains, gentlemen, freeholders, and inhabitants did grant to the ſaid Lord Deputy and his heirs, to the uſe of the Queen, her heirs and

Digitized by Google

and ſucceſſors, a yearly rent charge of ten ſhillings ſterling out of every quarter of land within that province. 2dly. they agreed not only to anſwer for ever to all hoſtings, roads, and journies within Conaught, where and when they ſhould have notice from the government, 50 able well armed footmen, upon their own charges, beſides the rent aforeſaid; and to all general hoſtings proclaimed within the realm, 20 well armed footmen, furniſhed with carriages and victuals, at their own coſts, during the time of the ſaid general hoſting, if the government require it. 3dly. That the ſtyles and titles of captainſhips and taniotſhips, and all other Iriſh juriſdictions, together with all elections and cuſtomary diviſions of lands, ſhould be aboliſhed, and that the lands and inheritance ſhould lineally deſcend according to the courſe of common law. 4thly. That the chieftains, gentlemen, and inhabitants, ſhould by letters patent have diverſe lands in the indentures ſpecified to them and their heirs, free from the compoſition, to be held by common knight ſervice. And that they ſhould have all goods and chattels of felons, and other caſualties and amerciaments.

Errors in them.

But it being afterwards found, that there were various errors and defects in the ſaid indentures of compoſition, and many erroneous proceedings in the execution thereof,

Letter of King James I. to hold a commiſſion of grace.

in order to rectify theſe errors, and to remove all doubts concerning the aforeſaid compoſition, and the non-performance thereof, and to remedy all the defects which might be in the ſeveral titles which were derived under the ſaid compoſition, his Majeſty King James I. by his letter dated 21ſt. July 1615, empowered ſurrenders to be taken from the ſaid inhabitants, and gave the following directions;

Firſt,

Digitized by Google

" 1ſt, To inquire by commiſſions, what quantity of " lands every of the ſaid inhabitants were ſeized of, and " upon return thereof, to accept ſurrenders of ſo much " thereof as the ſaid perſons ſhould offer to ſurrender, and " to cauſe letters patent to be made thereof, with a " reſervation to the King, and his ſucceſſors, of the ſaid " compoſition royal mentioned in the indentures of Queen " Elizabeth, and ſuch other rents and duties as were then " anſwered to the King, to be holden by common knights " ſervice, with a clauſe that no mention ſhould be made " of the ſurrenders.

" 2dly, That in the ſaid grants ſhould be contained " ſeveral pardons and grants of their ſeveral intruſions, " fines for alienations without licenſe, meſne profits, " reliefs, ſums for reſpite of homage, concealed wardſhips; " or that the deputy give them ſuch other effectual diſ- " charges as ſhould free them and their heirs from all " future trouble in any of the King's courts; with a " proviſo, that they ſhould firſt make ſome moderate " compoſition for their ſaid ſeveral intruſions with ſuch " patentees, or their aſſigns, to whom any grant had " been made of the ſame; the fourth part of which " compoſition was to be reſerved to the King". And afterwards ſeveral ſurrenders were made and letters patent granted in purſuance of the ſaid letter.

New defects and omiſſions diſcovered.

But towards the end of the reign of King James I. it being diſcovered that neither the ſurrenders or patents which had been ſo made and paſſed, had been enrolled in Chancery, by which means the title of the patentees became defective, and the lands were ſuppoſed to remain ſtill veſted in the Crown, the King propoſed to make a

Digitized by Google

plantation there, as had been done in Ulſter; though the omiſſion was not ſo much the wilful default of the patentees as the neglect of the officers, to whom they had paid near £2000 for the enrolments of the patents, which were never made.

New compoſition between king Charles I. and the patentees.

But King James died before he could complete this ſcheme. And in the third year of the reign of his ſucceſſor Charles I. a treaty was ſet on foot and concluded between him and the patentees, by which, in conſideration of a ſum of £120,000, agreed upon to be paid by them to his Majeſty in gales, they were admitted to enrol the ſurrenders and patents made to them; and ſuch as had a mind to make new ſurrenders, were to have the ſame accepted and enrolled, and new patents paſſed to them. And for their further ſecurity, their ſeveral eſtates were to be confirmed to them and their heirs by the next parliament, to be held in the kingdom.

And the patents confirmed by act of parliament.

And ſeveral acts of parliament were afterwards, though not without much difficulty and oppoſition through the arbitrary councils of Lord Strafford, made in this kingdom, for the purpoſe of confirming patents paſſed for thoſe and other lands, under commiſſions of grace, as they were called.

How theſe rents are in charge in the King's books.

And the aforeſaid compoſition rents are in charge in the King's rent rolls as follow, to wit, for every quarter part of a town land, 10s. And for every cartron, 2s. 6d. But I do not find that it was aſcertained what number of acres any of the ſaid denominations ſhould contain.

There

Digitized by Google

There were alſo other compoſition rents which depended on a compoſition made by the Lords of the pale, and the inhabitants of the province of Munſter, with Sir William Fitzwilliams, who was alſo Lord Deputy here in the reign of queen Elizabeth, after Sir John Perrot; but there does not at this day appear any diſtinct account of theſe rents; and it is imagined they have paſſed under the denomination of quit rents. Other compoſition rents

And the amount of theſe compoſition rents is about £1000 a year. Compoſition rents 1000l. a year.

Quit rent is a rent which aroſe and was induced in this kingdom after the rebellion in 1641, by the acts of ſettlement and explanation. And it is an acrable rent, according to the Engliſh ſtatute meaſure, reſerved upon all the eſtates in Ireland, which were forfeited by that rebellion, and granted by the Crown to adventurers, ſoldiers, and debenturers; and on lands which were then ſeized, and afterwards reſtored to innocent papiſts by decrees and certificates; or on lands given to them as repriſals; or to tranſplanters. Quit rents, what, and when and how induced.

And the rates according to which theſe rents were reſerved were as follow, viz.

		l.	s.	d.
For every acre in	Leinſter	0	0	3
	Munſter	0	0	2¼
	Ulſter	0	0	2
	Conaught	0	0	1½

And the yearly amount of theſe quit rents is about £50840. Amount of quit rents.

Digitized by Google

The King's rents to be paid to the collectors of the revenue.

These rents are paid to the several collectors of his Majesty's revenue, whose receipts, by 9 W. 3, 31. are good and valid in law against the Crown, and as effectual, to all intents and purposes, as an Exchequer acquittance duly passed and entered in the several offices of the Exchequer.

Collectors to give receipts for all payments, &c. and their fees.

And the collectors are thereby required, upon payment of any part thereof, to give to the person so paying the same, a full receipt or acquittance for what he shall receive, in parchment under his hand, wherein he shall mention the sum so by him received, and for what gales rent, and for what land, and on what account the same is paid to him; for which acquittance they are to receive, for any sum above five shillings, and not exceeding twenty shillings, sixpence; and for every sum above twenty shillings, and not exceeding five pounds, one shilling; and for every sum above five pounds, and not exceeding fifteen pounds, one shilling and sixpence; and for every sum above fifteen pounds, two shillings; and in no case to receive any more for one acquittance than two shillings.

Persons charged with several distinct sums in respect of several parcels of lands to have one acquittance only.

And by Sect. 4, where one person stands charged with the payment of several and distinct sums, in respect of several parcels of lands, or where the same is in charge in the name of other persons, not in possession of such lands, the several collectors are thereby required, on receipt of the said rents, or any part thereof, to give to the person in possession and paying the same, one acquittance for what he shall pay; which acquittance shall distinctly mention as well the lands and tenements, as the rent paid, and for what gale the same is paid, and by whom; for which one acquittance

Digitized by Google

quittance the collectors are to receive no greater fee than as aforeſaid.

Forfeited eſtates in Ireland, after ſale, liable to ſuch quit, &c. rents as they were before 13th Feb. 1688.

By ſtat. 11 Wil. III. ch. 2. Eng. the forfeited eſtates in Ireland ſhall, after ſale thereof, be ſubject to ſuch crown rents, quit rents and chiefries, as the ſame were liable to on the 13th of February 1688.

Not to extend to make void any grant of quit or other rent made in conſideration of any juſt debts releaſed to the Crown.

But it is thereby provided that nothing therein contained ſhall make void any grant of any quit rent, or other rents, made in conſideration of any juſt debts releaſed to the crown, to the full value of ſuch grant; or make void any grant for reduction, or abatement of any quit rent, where the ſame abatement hath been made in conſideration of the barrenneſs or coarſeneſs of any lands out of which the ſame is iſſuing, or for the better improvement thereof.

Truſtees of forfeited eſtates in Ireland to apportion quit and other rents of the ſame parcels, &c.

By 1ſt Ann. ſtat. 2. ch. 21. Eng. The truſtees for forfeited eſtates, or any ſeven of them, with the conſent of three of the Commiſſioners of the revenue in Ireland, may apportion any quit rent, crown rent, or compoſition rent, payable to the Crown, and charge the ſame in parcels upon the lands liable thereunto, ſo that every part ſold by itſelf, having regard to its quantity and value, may be liable to a certain proportion of the ſaid rents; which apportionment, ſet down under the hands and ſeals of the ſaid truſtees, &c. and Commiſſioners, &c. and enrolled in the Exchequer in Ireland, ſhall be good in law, and be reſerved to her Majeſty, &c. in the purchaſe deed; and the premiſes ſold diſcharged from the reſt of the

Digitized by Google

the ſaid rents, and ſhall be liable to the ſaid reſerved rent in the ſame manner as it was before to the whole rent. And if the truſtees and Commiſſioners ſhall not agree in the ſaid apportionments, before the 24th of May 1703, or ſhall ſooner diſagree in them, the Chief Governor of the ſaid kingdom may make the like apportionment, which ſhall be of the ſame force as if made as aforeſaid *.

Arrears from 25th March 1692 to 25th March 1695 diſcharged.

By ſtat. 9. Wil. III. ch. 29. and 2. Ann. ch. 4. the ſeveral arrears of quit rent out of lands, *&c.* returned to have been waſte from the 25th of March 1692, to the 25th of March 1695, are diſcharged, *&c.*

Plus acres what, in whom veſted and to what quit rent liable.

By ſtat. 2. Ann. ch. 8. the lands called plus lands, or plus acres, which are parcels of denominations of

* On the plan of this power in the truſtees of apportioning rents, which expired as is above mentioned on the 24th of May 1703, the court of Exchequer have ſince proceeded in the apportioning of rents; but always with a *ſalvo jure coronæ*.

But for this purpoſe, a petition is to be preferred to the court, verified by affidavit, (notice being firſt given to the ſolicitor for the King's rents,) who refer it to the Auditor general, and this order of reference is to be ſerved on all the parties concerned; and when the Auditor general has apportioned the rents, his report thereon will, on motion of counſel, be referred by the court to the Attorney general, (notice being firſt given to the ſolicitor for the King's rents as aforeſaid,) who is alſo to make his report, which is generally a tranſcript of the Auditor's report; and upon his report an order is to be obtained for confirming it, unleſs cauſe, which order is to be ſerved on all the other proprietors of the lands; and if no cauſe be ſhown to the contrary, on affidavit of ſuch ſervice, and certificate from the ſecond Remembrancer of no cauſe, and counſel's motion thereon, the report of the Attorney general is confirmed abſolutely. And note, cauſe may be ſhown either on affidavit, notice and motion, or by exceptions to the report, which are to be ſet down to be argued, as in other caſes of exceptions to his report. See the caſe of his majeſty againſt Nutley, 30 June 1731. Same againſt Daly, 11th December 1731, againſt Morgan, 31ſt May 1745, and againſt Rielly, Hill. 1748.

lands

Digitized by Google

lands undiſpoſed of, where the reſidue of ſuch denominations have been granted by patent, are veſted in ſuch perſons, who on the 1ſt day of October 1702, were in poſſeſſion of ſuch plus acres by themſelves or thoſe deriving under them, in their right, or under colour thereof; which perſons ſhall hold and enjoy ſuch plus acres to them and their heirs, liable to ſuch quit rent for the ſame *pro rata*, as is payable out of the other part of ſuch denominations.

Undiſpoſed lands and plus acres coarſe and barren, how to be diſpoſed of.

And by the ſaid act, reciting that there were ſeveral denominations of land entirely undiſpoſed, which, as alſo ſome of the aforeſaid plus acres, were ſo coarſe and barren that they were not worth the quit rent they were liable unto, and therefore remained deſolate, it is made lawful for the Chief Governors and ſix more of the privy council to demiſe or grant the ſame to ſuch proteſtants, and for ſuch term of years, as they ſhall think fit, at ſuch a reaſonable rent as may encourage ſuch perſons to plant and inhabit the ſame.

But it is thereby provided that nothing therein contained ſhall avoid any ſettlement, leaſe, charge, or other conveyance, or encumbrance made by the perſons whoſe eſtates or poſſeſſions are thereby confirmed, or by the perſons under whom they derive; but that the ſame and all other rights and titles, except of her Majeſty, to the ſaid lands, ſhall be of the ſame effect as if the ſaid act had never been made.

Rents put in charge two ways.

Rents are uſually put in charge two ways; to wit, by the Auditor general, *ex officio*, from the King's grant; or by the court of Exchequer upon a *ſcire facias* on behalf of the Crown.

In

Digitized by Google

By the Auditor general, *ex officio*, from the King's grant.

In the firſt caſe, where inquiſitions have been taken either by ſpecial commiſſion, or by the eſcheator *ex officio*, and a particular thereof made out by the Surveyor general and Auditor general, a *fiat* is then prepared by the Attorney or Solicitor general for the patent or grant of the lands; which *fiat* is to be lodged in the rolls office; and when the grant is ſealed and enrolled, it is not given directly to the party concerned, but brought, by one of the clerks in the rolls office, to the Auditor general, to be by him entered, who from thence aſcertains the rent, and inſerts the ſame in the roll of the King's rents; and the grant is then delivered to the party.

Or on a ſcire facias for his Majeſty.

But where any old rent is to be put into charge, which hath not before been in charge in the King's rent roll, or where there is any difficulty with regard to the right, ſo that it may be neceſſary that evidences and proofs be produced for the determining thereof, in ſuch caſes the proper method of proceeding is to ſue a *ſcire facias* for his Majeſty, directed to the ſheriff of the county where the lands lie, to give notice to the party to anſwer the charge thereon *.

The proceedings on ſuch ſcire facias.

And the appearance to this *ſcire facias* is to be entered in the rule book in the ſecond remembrancer's office, from whence this writ is to iſſue. And on this *ſcire facias* rules to plead are to be entered, and ſuch proceedings had, as on *ſcire facias's* on recognizances to the King.

* So determined in the caſe of his Majeſty againſt John Daly, in this court, Hillary term, 1752. And in the caſe of his Majeſty againſt O'Brien, afterwards Earl of Thomond, in Hillary term, 1758, after many proceedings had been for ſeveral years in each caſe, on the Attorney general's report and exceptions thereto.

It

Digitized by Google

It has often happened that the ſame lands have been granted by patent to different perſons; in which caſe, if it were upon the acts of ſettlement and explanation, the lands were adjudged to the patentee who had the prior certificate; but yet as theſe lands were often mixed with other denominations in the ſame patent, the patentee, who did not enjoy the lands ſo doubly granted, was nevertheleſs liable, as to his other lands, to the rent reſerved upon the lands which he did not poſſeſs. Diſclaimer, in what caſes.

In all caſes of this ſort the grantee of the lands is to file a plea of diſclaimer in the ſecond remembrancer's office, wherein he is to ſet forth his title to the lands in the grant which he doth poſſeſs, and then to diſclaim the lands which he doth not poſſeſs; and to this plea the Attorney general is to file a confeſſion; and thereupon the court will give judgment for exonerating the defendant, and the lands of which he is ſeized, from the rents ſo charged upon the lands he hath diſclaimed; and this judgment is accordingly made up and enrolled among the records of the ſaid office. and how.

As to over charges and double charges * which have happened in ſeveral caſes, as where more acres have been Over charges and double charges in ſeveral caſes.

* In the year 1758, it appearing to the commiſſioners of the revenue that ſeveral lands had, for many years, been returned by the ſeveral collectors of the kingdom, in their liſts of arrears, as double charges, and that ſeveral perſons had, from time to time, been grievouſly vexed by diſtreſſes and otherwiſe for the ſame, on the 11th of July in the ſame year an order of the board was made, that the ſolicitor for the King's rents ſhould cauſe all the ſaid double charges to be diſcharged and ſtruck out of the rent rolls at the expenſe of the Crown, and without any expenſe to the ſubject; which was accordingly done on conſtats thereof from the Auditor general, the conſent of the Attorney general, and on motion thereon, by the ſolicitor for the King's rents without any other or further proceeding.

Digitized by Google

distributed and granted, than the lands forfeited, by the survey and distribution book, appear to contain; or where there have been two grants at different times to the same person, or those deriving under him, of the same lands, and the rents reserved on each are both continued in charge, whereas the last rent only ought to be charged; or where the same lands are charged in two districts, or charged twice in the rent roll; or where part of the lands lie in one barony and part in another, but being in different districts are charged in the rent rolls in both; or where a person apprehends that the Crown has not a right to any rent with which his lands are charged, or that the lands are not liable thereto; in such and the like cases the party so charged may, as well before as after any distress or other proceeding is taken for the recovery thereof, move the court by counsel on a petition setting forth the facts, (which are usually verified by affidavit) that it may be referred to the Auditor general to report thereon; and the court will make an order for that purpose, with a respite of proceedings in the mean time: but the usual notice of this motion is to be given to the solicitor for the King's rents. Then an attested copy of the order is to be brought to the Auditor general, who thereupon will, if required, issue summonses for attendances on him, and proceed to make his report.

The proceedings to discharge them by petition.

And when the Auditor general has made his report, the party, in whose favour it is, may move the court by his counsel that the Auditor's report may be referred to the Attorney general, who makes his report thereon, which is usually *totidem verbis* with the report of the Auditor general *, (for which his fee is two guineas); then a motion

And the Auditor's report referred to the Attorney general.

* Of late the Attorney general examines into the matters contained in the report of the Auditor general, in presence of the solicitor for the Crown and the attorney for the petitioning party, and varies the Auditor's report as he sees fit.

may

Digitized by Google

may be made by counſel, without notice, to confirm the Attorney general's report; and the court will make an order for that purpoſe, unleſs cauſe be ſhown to the contrary in four days after ſervice of the order. And if no cauſe be ſhown in theſe four days, the court, on certificate thereof and affidavit of the ſervice of the order, will on counſel's motion make the order abſolute, and confirm the report. And if the report be in favour of the ſubject, the court will alſo order the rent and arrears to be ſtruck out of charge; and if a diſtreſs be taken, or ſecurities or money lodged in the hands of the collector or other perſon, they will order them to be reſtored to the party.

Exceptions may be taken to the Attorney general's report, but not to that of the Auditor general.

And either party may, if he thinks himſelf aggrieved by the report made by the Attorney general, take exceptions thereto; and theſe exceptions are to be ſet down as a cauſe, and argued in court by the counſel for the Crown and party; but no exceptions are to be taken to the report of the Auditor general, as his report muſt be referred to the Attorney general *.

But if it be a matter of great nicety and difficulty, the court will not determine it upon theſe exceptions; but will leave the party to be relieved by *traverſe*, *ſcire facias*, &c. according to the circumſtances of the caſe. See the caſe of his Majeſty againſt the tithes of Jerpoint in this court, Trinity Term 1749, where in ſuch caſe a *traverſe* was granted to the ſubject, although the King was in poſſeſſion by virtue of an injunction on a cuſtodiam, on giving ſecurity by recognizance to be anſwerable for the poſſeſſion and meſne rates, if adjudged againſt the

* So determined in the caſe of his Majeſty againſt the right honourable Percy Wyndham O'Brien afterwards earl of Thomond, in Hill. Term 1758.

Digitized by Google

traverſer, &c. and afterwards an *amoveas manus* was granted.

Petitions to the Exchequer for diſcharge of arrears of quit, &c. rents, where none have been paid for 20 years before, &c.

By ſtat. 3 Geo. III. ch. 22. It is made lawful for every perſon, bodies politick and corporate, at any time before the 25th day of March 1770, to prefer their petitions to his Majeſty's court of Exchequer, thereby ſetting forth, that all or ſome of the lands, rectory, abbey, priory, or monaſtery lands, tithes, fairs, tenements and hereditaments whereof they are ſeized, are ſubject or liable to ſome certain quit rent, crown rent, compoſition rent, or other chief rent, payable to his Majeſty, which hath not been paid by them, or thoſe under whom they reſpectively derive, for 20 years next immediately preceding the 29th day of September 1764, particularly deſcribing, in ſuch petition, the lands liable to the payment thereof, as well by their preſent as former names and denominations, and thereby ſubmitting to pay all ſuch annual quit rent, crown rent, compoſition rent, or other chief rent, as ſhall become due after the ſaid 29th day of September, and praying to have ſuch lands diſcharged from all arrears of ſuch rent incurred, due before the ſaid 29th day of September 1764; on which petition an order ſhall be made by the court, that the Auditor general ſhall ſearch into the reſpective rent rolls, books and records in his office, and ſhall certify to the court, by a certain day to be appointed by the ſaid court, whether any ſuch rents, as are mentioned in ſuch petitions, have been accounted for to his Majeſty or his predeceſſors, within the ſpace of twenty years next preceding the ſaid 29th of September, 1764.

And the Auditor general is thereby required to certify to the court, whether it appears to him that ſuch rents have

Digitized by Google

have been paid or accounted for to his Majeſty or his predeceſſors, within the ſpace of 20 years next before the 29th day of September 1764; for which ſearch two ſhillings and ſix pence and no more, and for which certificate ſix ſhillings and eight pence and no more, and for entry of a diſcharge of ſuch arrears out of the rent rolls three ſhillings and four pence and no more, ſhall be paid to the ſaid Auditor general.

And if upon return of ſuch certificate, and upon examining into the truth of the allegations of ſuch petition, by the court, in a ſummary way, it ſhall appear to the court that the allegations contained in ſuch petition are true, or if it ſhall appear that no quit rent, crown rent, compoſition rent, or other chief rent payable to his Majeſty, has been paid for or out of ſuch lands, or has been accounted for to the collectors of his Majeſty's revenue, for the diſtrict wherein ſuch lands lie, within the term of 20 years next before the 29th day of September, 1764, in ſuch caſe the court is by ſaid act required to make an order on ſuch petition, that the lands therein mentioned and the perſons who from time to time reſpectively held and enjoyed the ſame, ſhall be abſolutely freed and diſcharged of and from all ſuch rents and arrears due or in arrear at any time before the ſaid 29th day of September, 1764; and ſhall order the ſaid Auditor general to give in charge ſuch growing rents as the ſaid lands ſhall appear to be charged or chargeable with, which ſhall become due from and after the ſaid 29th day of September, 1764, to the collectors of the diſtricts where ſuch lands lie, to the intent that the ſame may be duly collected for the future; and ſuch order ſhall be an effectual diſcharge againſt his Majeſty, as to ſuch publick arrears.

The

Digitized by Google

Old method of collecting the king's rents.

The old method of collecting theſe rents antecedent to the year 1693 * (at which time the eſtabliſhment of the kingdom was ſettled) was thus;

The patents on which theſe rents are reſerved were originally, after they were enrolled, (as they are at this day) entered with the Auditor general of the Exchequer, who out of them made an abſtract of the rent reſerved, for what land, in what country, from whom, and of the date of the patent; and theſe abſtracts were reduced under the heads of the ſeveral counties where the principal denominations of lands, out of which the rents were reſerved, lay.

By proceſs of the pipe to the ſheriff.

From this office a rent roll was twice a year tranſmitted, ſometimes to the ſecond remembrancer's office, ſometimes to the clerk of the pipe; which laſt office, twice a year, viz. at Michaelmas and Hillary terms, made out proceſs to the reſpective ſheriffs of the ſeveral counties in this kingdom for the collection of them.

Who accounted for them.

And the reſpective ſheriffs for each county, once a year when they paſſed their accounts, accounted with the court of Exchequer for theſe rents; and the whole rent roll for each county being in open court read over to the ſheriff, he upon his oath gave his anſwer to each particular; if received, he charged himſelf with it, which in the Exchequer language is called *Tot*, i. e. *totum in manibus*; if not received, he gave his reaſons upon oath why he

* The total amount of theſe rents at that time was £6506 2 16 3, out of which £4664 10 were to be deducted for ſeveral of the ſaid rents granted to particular perſons by K. Ja. II and K. Wil. and Q. Mary; but they were afterwards made unalienable by the Engliſh act of 11 Wil. III. as is before mentioned.

could

Digitized by Google

could not collect it; which, if juſt, were allowed by the court; if not, the court charged the ſheriff with it, and let him take a writ of aſſiſtance to collect it for himſelf.

The arrears were ſent out again by writ or by proceſs to the ſucceeding ſheriff together with the rents of his time.

The ſheriff took a *debet* of the balances due on his account from the clerk of the pipe, and thereupon paid the money into the treaſury. And took a debet from the clerk of the pipe, &c.

This method of collecting was afterwards thought inconvenient for the following reaſons, viz. This method inconvenient.

1ſt, The rents came in but once a year, the ſheriffs not being to account oftener; and it was not convenient that ſo large a ſum as £30,000 or upwards, which was the firſt half years rent after the eſtabliſhment was ſettled, ſhould lie in the hands of the ſeveral ſheriffs of the kingdom until the year was out, when the King's occaſions required it before. The reaſons why.

2dly, They were never well brought in by the ſheriffs; for they not being able to collect them themſelves but doing it by their bailiffs, ſeveral ſums which were received were, either by neglect or out of deſign, not returned by the bailiffs as received; ſo that, the ſheriff not charging himſelf with them on his account, the ſubject, on the renewal of the proceſs, was forced to apply to the Exchequer for redreſs to his great expenſe.

3dly, Great arrears were found to be returned by the ſheriffs, they either out of favour to particular perſons, or

Digitized by Google

or regard to perſons of quality, neglecting to levy the rents from them.

4thly, Great ſums lieing in the hands of the ſheriffs or ſub-ſheriffs until their accounts were paſſed, they were thereby tempted to ſpend or miſapply the money, which proved often the ruin of themſelves and their ſecurities.

Beſides the charge of iſſuing it in this method was inconvenient to the ſubject; for it generally happened that lands in ſeveral denominations, in diſtant places, ſometimes in ſeveral counties, were paſſed in the ſame patent, and a certain yearly rent reſerved to be iſſuing out of the whole; in which caſe, each parcel of land being by law liable to the whole rent, the Auditor general, in his rent roll or charge for the ſheriffs collection, had given directions for demanding and levying the whole rent only on the principal denominations of land in the patent, no notice being therein taken of the other denominations which were in the hands of other perſons and often in different counties; by which means the tenant of the principal denomination was forced to be at great trouble and expenſe to get in the proportions of the tenants of the other lands.

This being the general caſe was very miſchievous, and not to be avoided but by apportioning the rent on each denomination of land in charge in the grant, and then iſſuing directions accordingly for the collecting from the particular tenants of each denomination their ſeveral portions, which was without prejudice to the King's remedy upon the whole, in caſe any particular parcel of land ſhould become unable to diſcharge its portion of rent.

Theſe

Digitized by Google

The principal reaſon for changing the old method of collection.

Theſe are the reaſons commonly given for changing the method of collecting by ſheriffs; but theſe miſchiefs might in a great meaſure have been remedied without altering the courſe. And there is one more which was thought to be of greater force, and the chief motive of changing the old officers for collecting and managing the revenue through moſt of its branches. In the year 1669 the whole revenue of this kingdom was ſet to farm to John Forth, of the city of London, alderman, and ten others, for ſeven years from the Chriſtmas before, at ſeveral diſtinct yearly ſums amounting in the whole to £219,500. As ſoon then as the farmers had got the receipt and management of the revenue into their hands, it was concluded, and with good reaſon, that officers who depended on them and the commiſſioners of the revenue for their offices, and who were liable to be removed on the leaſt apprehenſion of neglect or other default in them, would be more ſtrict and circumſpect than ſuch as had no dependance on them, and whoſe office was rather a burden to them without profit, as the ſheriffs collection was; and who had legal eſtates by patent in their offices, and whom conſequently the farmers and commiſſioners of the revenue could not control.

New method by dividing the kingdom into diſtricts and appointing collectors.

And therefore the whole kingdom was divided into ſeveral diſtricts, according as the land lay in compaſs, for the eaſe and conveniency of the collection; the diviſion by counties being unequal; ſome of them being of too great an extent for the collection, and ſome too ſmall; and a particular collector was appointed for each diſtrict.

A clerk of the quit rents and Accomptant general.

And as the King received a certain rent from the farmers, and was not concerned how much the revenue

Digitized by Google

produced, the farmers were suffered to manage it their own way; who thereupon slighted the course of the Exchequer, and appointed their own officers; viz. a clerk of the quit rents, who made out the charge to the collectors, and an Accountant general, before whom these collectors were to account; both which served instead of the Auditor general. And these officers made out their charge, and settled their books by the records in the Auditor's office, of which the farmers, by their patents, were to have the inspection and use during their continuance.

Subsequent alterations in the rent roll not taken notice of by the Auditor.

But several alterations having been made in the quit rents, some upon commission for reducing them in several places where they were too high, and others upon orders from the Exchequer, the alterations were entered with the farmers clerk of the quit rents, but not with the Auditor, nor any notice taken of them in his book. Besides, the change in issuing of the charge from counties to districts, and the apportionment of the rents, made a vast alteration in the rent roll; so that by these means, at the end of the farms, the Auditor was not able to make out any charge for the collection of the quit rents, nor was there any certain rent roll or record for that part of the revenue, but it lay wholly in the breast of the clerk of the quit rents to the farmers, and his private books, on which there was no cheque.

After the revolution a new rent roll made.

It continued thus after the end of the farms until the revolution; but since that period the court of Exchequer, taking notice of the condition which that part of the revenue was in, thought it necessary that there should be a certain rent roll or record of the quit rents, to remain as a charge to the collectors, and a cheque to the persons concerned in the receiving the same; and did, with

Digitized by Google

with the encouragement and assistance of the then government, out of the quit rent books and Auditors books, and by comparing them with the original patents, fix a certain and methodical rent roll of the quit rents, according to the present course of collection by districts, in the manner following viz.,

In what manner.

Under the head of each district are placed the particular counties; and under them the baronies, tenants names, denominations of land, the number of acres of the whole, and the apportioned rent of each denomination, with the reduced rents, if there be any * reducements, each in distinct columns.

Which issues once a year to the collector.

The rent roll for each district, according to its form, issues out, once a year, to each collector, and is his charge; and he collects these rents, and gives an account to the commissioners of this and the other branches of the revenue, which he pays into the treasury, from time to time, as there is occasion. And between Lady

* These reducements were, by virtue of a commission under the great seal of Ireland, directed to his Excellency, Arthur Earl of Essex, then Lord Lieutenant of Ireland, and others, bearing date the 25th June 1676, grounded on his Majesty's letter under his royal signet, dated at Whitehall the 3d of December 1675, whereby they were empowered to reduce and abate quit rents and arrears thereof, due out of coarse and barren lands in the Kingdom of Ireland, where the quit rent was equal to or near the yearly rent of the land. And these reducements were engrossed on rolls of parchment, and are in the Chief remembrancer's office, and are readily resorted to by means of the name of the person in whose favour the reduction was made; and other reducements were made several years before, by the Lords Justices of this Kingdom, by virtue of the King's letter, upon petitions of officers, soldiers, and others, to whom such coarse and barren lands had been set out. And the orders for these reducements are in the offices of the Auditor general and Surveyor general; and these matters were referred to these officers for their report, before the orders were conceived.

Digitized by Google

day in March, and Lammas in every year, the ſeveral collectors of the kingdom paſs their accounts for the whole year, according to the time appointed by the commiſſioners for that purpoſe, in the manner herein after mentioned.

CHAP. V.

OF THE CUSTOMS, AND IMPORT EXCISE, AND ADDITIONAL DUTIES ON GOODS IMPORTED, AND EXPORTED, AND THE MANNER OF COLLECTING AND ACCOUNTING FOR THEM.

Cuſtoms, what.

THE cuſtoms are the duties of *poundage* and *tunnage* on goods imported, and of *poundage* on goods exported.

Poundage old. Davies 31.

Poundage is an ancient duty, payable to the crown on all merchandize and wares imported into or exported from this realm, to be ſold; except wines and oils, which pay cuſtom by way of tunnage. And this duty, which has been granted to the crown, by various acts of parliament, in England, from the reign of Edw. III. and moſtly after the rate of twelve-pence in the pound, according to the ſeveral and reſpective values and rates of the merchandize, is ſaid by Sir John Davies to have been firſt granted to King Hen. VII. in this kingdom in the 10th year of his reign for 5 years; and at the end of that term to him and his heirs for ever, after the rate aforeſaid. And this is called the old poundage.

* The word cuſtom, which is denominated in the ancient barbarous latin *cuſtuma*, and not *conſuetudo* (uſage) ſeems to be derived from the french word *couſtum*, or *coutum*, which ſignifies toll or tribute, and owes its own etymology to the word *couſt*, which ſignifies price, charge, or *coſt*. 1. Blackſt. Com. c. 8.

And

Digitized by Google

And by the 14th and 15th Car. II. c. 9. the ſaid duty of 12 pence in the pound on all goods imported and exported, (except wines and certain oils) is granted to the King and his heirs, to be paid according to the ſeveral and particular rates and values of ſuch merchandize, as they are reſpectively rated in the book of rates annexed to the ſaid ſtatute. And in caſe of importation or exportation of any goods not mentioned therein, the poundage is directed to be levied according to the true value, to be affirmed upon the oath of the merchant, in the preſence of the cuſtomer, collector, comptroller and ſurveyor, or any two of them. and new.

But out of this duty of poundage on goods imported there is to be, by the 8th rule of the ſaid act, an allowance of £5 per £100. Allowance out of it.

Tunnage is a duty payable by the ſaid ſtatute on wines and certain oils imported into this kingdom, viz. Tunnage.

		l.	s.	d.
For every tun of French wine imported	by ſubjects,	3	10	0
	by ſtrangers,	4	13	4
For every pipe or butt of Levant, Spaniſh, or Portugal wine,	by ſubjects,	2	10	0
	by ſtrangers,	3	6	8
For every awme of Rheniſh,	by ſubjects,	0	15	0
	by ſtrangers,	1	0	0
For every tun of rape and linſeed oil,	by ſubjects,	0	15	0
	by ſtrangers,	1	0	0
For every tun of Spaniſh &c. oil,	by ſubjects,	2	12	0
	by ſtrangers,	3	5	0

For

Digitized by Google

For every tun of fallet oil,	by ſubjects,	3	3	0
	by ſtrangers,	3	18	9
For every tun of oil of Greenland,	by ſubjects,	0	8	0
	by ſtrangers,	0	10	0
For every tun of oil of Newfoundland,				
	by ſubjects,	0	6	0
	by ſtrangers,	0	7	6

Allowance out of it for leakage.

But out of this duty there is to be, by the 7th rule of the ſaid act, an allowance of £10 per £100, for leakage on all wines imported; provided ſuch wines have not been filled up on board the veſſel.

Goods wrecked not liable to cuſtom. Vaugh. 159. L. Raym. 388. 501.

It has been determined that goods ſhipped in foreign parts as merchandize, and wrecked on the coaſt, are not liable to the duties impoſed by this act; as they could not be deemed imported within the meaning of it.

But goods ſaved, not being wrecked, liable.

But by the 6 Geo. I. c. 8. all goods which ſhall be ſaved out of any veſſel that ſhall happen to be forced on ſhore or ſtranded on the waſtes of this kingdom, not being wrecked goods, *jetſam*, *flotſam*, or *lagan*, ſhall after all charges of ſalvage &c. be ſubject to the payment of cuſtom as if imported.

Impoſt exciſe, what

The *impoſt exciſe* * or *new impoſt* is a duty of poundage granted by 14 and 15 Car. II. c. 8. to the King and his heirs on all commodities, merchandizes and manufactures imported, (jewels, bullion, corn, arms and ammunition

* So called from the Dutch word *acciſe*, which ſignifies an aſſeſſment upon a commodity; or from the word *exciſum*, a part of the profit cut off from the whole. Gilb. Treat. of Exch. 252.

excepted)

Digitized by Google

excepted) according to the rates they are valued at in the book of rates annexed to the ſaid ſtatute, viz. for all ſorts of drugs 2 ſhillings in the pound, for all ſorts of raw hemp, undreſs'd flax, tow, roſin, pitch, wax, cable, cable yarn or cordage, 6 pence in the pound; for all wines, tobacco, ſalt, and other goods ſpecified and valued in the ſaid book of rates, one ſhilling in the pound; and for all other goods not ſpecified or rated in the ſaid book of rates, one ſhilling in the pound according to the book of rates for cuſtoms; and if omitted there, then as they ſhall be rated and valued by the ſub-commiſſioner collector and ſearcher for exciſe in the place where imported, or according to the higheſt market price.

All which duties are to be paid by the firſt buyer before his receiving them from the merchant importer; unleſs the merchant be a ſhop-keeper, retailer, or one employing

To whom to be paid.

* It is this impoſition of the duty upon the buyer that conſtitutes the eſſential difference between cuſtom and exciſe, properly ſpeaking; the former being a tax immediately paid by the merchant, altho' ultimately by the conſumer; the latter, an inland impoſition paid either upon the conſumption of the commodity, or upon the retail ſale, which is the laſt ſtage before the conſumption. And the exciſe is doubtleſs the moſt œconomical way of taxing the ſubject, and renders the commodity cheaper to the conſumer; for this obvious reaſon, that the earlier any tax is laid on a commodity the heavier it falls upon the conſumer in the end; becauſe every trader, thro' whoſe hand it paſſes, muſt have profit, not only upon the commodity, but alſo upon the tax itſelf. But this good effect of the exciſe is not produced by this clauſe of the act which brings the duty one ſtage nearer the conſumptioner; it being now generally paid in the firſt ſtage, or by the merchant importer, on the terms herein after mentioned. So that the diſtinction in this kingdom between the cuſtom inwards and import exciſe anſwers no other purpoſe, than to make the collection of thoſe cuſtoms much more intricate and complicated than it would be if they were both granted by one undiſtinguiſhing law, and levied in one manner, and by the ſame rate, under the general term of cuſtom. And this diſtinction likewiſe furniſhed a ſtrong objection againſt the late meaſure of dividing the boards of cuſtoms and exciſe; from the delay and additional expenſe which muſt ariſe to the merchants by the neceſſity of returning ſeparate accounts to the two boards.

them

Digitized by Google

them for his own conſumption; in which caſe the duties are to be paid by the importer, before he be permitted to carry the goods away from the cuſtom houſe or place of landing.

And it is obſervable that wine pays cuſtom by the meaſure, viz. by tunnage; but exciſe by value, viz. by poundage.

A bond to be given for it by the importer, and an account kept.

But the duty of exciſe not being payable until the goods are ſold, a bond was by the act directed to be given by the merchant importer, conditioned not to deliver any of the goods to any of the buyers thereof, or to any ſhopkeeper or retailer whatſoever, till ſuch time as the exciſe ſhould be duly paid by ſuch buyer &c. and an import account was kept according to the act.

But now an allowance made for prompt payment.

But this being found very inconvenient, on the 21ſt October 1679 an agreement was entered into between the then commiſſioners of the revenue (by virtue of a power in their patent ſo to do) and ſeveral merchants, by which, for prompt payment of the duties of exciſe, allowances of £10 per £100 in the exciſe and additional duties on wines and tobaccoes, and of £6 per £100 on all * other goods imported, were given to the importer. And this agreement, though at firſt but for one year and for the benefit of the merchants only who ſigned it, being found to be of equal benefit to the crown and ſubject, became general by uſage and is continued to this day.

To wholeſale merchants only.

But none but wholeſale merchants are entitled to theſe deductions or allowances. Retailers or conſumptioners

* But coals, ſlates, coaches, and chariots have always been deemed retailed goods, and excluded from the benefit of the £6 per cent deduction.

are

Digitized by Google

are to pay down their exciſe, as the act directs, without any deduction.

And the merchants who are entitled to thoſe allowances are generally well known. But where the merchant is not known, (if it be in the city of Dublin) he is to produce a certificate under the hands of ſeveral known merchants, which is firſt referred to the collector, who examines into the truth of it; and if on inquiry he finds the perſon qualified, he makes his report accordingly; and the commiſſioners make an order for allowing ſuch perſon the benefit of an wholeſale merchant. How obtained in Dublin.

But if this allowance be demanded in any of the diſtricts in the country, a certificate is to be produced to the commiſſioners, ſigned by ſome of the principal merchants of the city or town in which the perſon claiming it reſides, and alſo by the collector and ſurveyor of the diſtricts; which certificate the commiſſioners refer to the examinator of the import exciſe; and on his report an order for the allowance is made out. How in the country.

But beſides the aforeſaid perpetual duties of cuſtom and exciſe, there have been, from time to time, granted by parliament, and are now payable, various additional and temporary duties on ſeveral goods and merchandizes imported and exported; the principal of which are thoſe on tobacco, ſpirits, and wine imported. And theſe duties are collected and levied according to the act of exciſe, viz. may be bonded by wholeſale merchants, or paid down in ready money with the ſame diſcount allowance. Additional duties on goods imported and exported.

The collection of the ancient cuſtoms, antecedent to the aforeſaid acts of cuſtoms and exciſe, was in this manner. Ancient method of collecting the cuſtoms.

Digitized by Google

There were then in every port a cuſtomer, a comptroller, and a ſearcher; and theſe three officers took care of all goods imported or exported. They are mentioned in Cotton's records, 17 Edw. 3. fol. 38, *&c.* *.

Cuſtomer, his duty.

The cuſtomer, who in Dublin port is called cuſtomer and collector, was the moſt ancient and at firſt the ſole officer who was the collector of cuſtoms, and accountable for them to the King; 9 Hen. 6. 12 b. and 1 Hen. 7. 4 b. He was to make an entry of all goods and merchandizes imported or exported; to rate or tax the original bills of entry; to receive the cuſtoms; and to ſign all warrants for the charging and diſcharging of goods. He was to charge himſelf upon oath, and to diſcharge himſelf by tallies of payment; and upon his appointment to his office he was to give ſecurity before the Chief Baron of the Exchequer, for his true accounting and anſwering his balance.

Comptroller, his duty.

Then becauſe the cuſtomer was accountable to the King, but could not be charged but by his own book of cockets or his oath, a comptroller was appointed as a check upon him; and his office was to rate another bill of entry of all goods imported and exported; to take an account in his

* Theſe ſeem to be the ancient port officers, and hold their patents from the Crown; though by ſeveral old ſtatutes they ſhould only be made during pleaſure. And notwithſtanding the alteration which has been ſo made in the conſtitution, conduct, and management of the revenue of Ireland, yet theſe officers are continued in ſeveral parts of the kingdom, and have ſalaries on the civil eſtabliſhment; to wit, there are in Dublin a cuſtomer, comptroller, and ſearcher; in Limerick, the like; in Waterford and Ro s, the like; in Kinſale, the like; in Youghal and Dungannon, the like; in Drogheda, Dundalk, and Carlingford, the like; in Cork, a cuſtomer and a ſearcher; in Galway, the like; in Carrickfergus, the like; in Strangford, the like; in Wexford, a cuſtomer and a comptroller; in Killybeggs, the like; in Dingleicouch, the like.

book

Digitized by Google

book of the quantity and quality of all ſuch goods, in the nature of the cuſtomer's entry; and to counter-ſign all warrants for the charging and diſcharging of goods.

Searcher, his duty.

Afterwards, in aid of the cuſtomer, to find concealments and ſubſtraction of cuſtoms and ſubſidies, and to ſeize all merchandizes forfeited, the ſearcher was appointed; who in his grant of office was alſo called packer and gauger. He anciently received the warrants and cockets from the cuſtomer and comptroller to unlade or lade the goods. When the merchant had paid his cuſtoms to the cuſtomer, he had a warrant from the cuſtomer and comptroller to land the goods; but if they were landed before the cuſtoms were paid or compounded for, the goods were forfeited, and the ſearcher was to make a ſeizure of them. If the goods were to be ſhipped outwards, the merchant went to the cuſtomer and comptroller and entered the goods, and paid the cuſtoms or agreed for the cuſtoms outwards, and when ſuch payment or agreement was made, they received from ſuch cuſtomer or comptroller a licenſe to export ſuch goods, which was called a cocket. He alſo viewed all the goods and examined the ſeveral ſpecies of them, to ſee if they agreed with the warrant of diſcharge, which he entered in his book.

Surveyor, Superviſor, his duty.

Laſtly, to diſcover and prevent frauds in all theſe an officer called the ſuperviſor was eſtabliſhed, who is now called Surveyor general of the cuſtoms of the whole kingdom. And he has deputies under him in each port, whoſe buſineſs it is to ſurvey and overſee, from time to time, all and every the cuſtomers, comptrollers, ſearchers, and other officers to be employed in the ports, creeks, and havens,

Digitized by Google

in and about the collecting, comptrolling, and ſurveying the cuſtoms, ſubſidies, poundage, and impoſitions, and to ſee that they and every of them did, from time to time, well and truly perform and diſcharge their ſeveral duties in their ſaid ſeveral offices, in due collections and payments of the ſaid cuſtoms, *&c.* and in the keeping true books and records of the ſame; and in returning the ſaid books every half year duly into the Exchequer, in Michaelmas and Eaſter term, and to the Auditors for the revenue; and to ſee that the ſaid books and accounts of the profits thereby ariſing and growing due unto his Majeſty were duly audited and certified in the ſaid court of Exchequer; and to cauſe the ſaid officers and every of them to do and perform all and every thing whatſoever appertaining to their ſaid ſeveral and reſpective offices.

Ancient manner of accounting for the cuſtoms, by iſſuing port books yearly to the cuſtomers, &c.

And the manner of accounting for and paying in the ancient cuſtoms was thus. There iſſued yearly from the chief remembrancer's office parchment books, ſealed with the ſeal of the court of Exchequer, for each cuſtomer, and for the ſeveral comptrollers of the ſeveral ports of the kingdom; on each of which books was endorſed the port for which it was; that it contained a certain number of leaves, and was for an entry to be made therein of all goods imported and exported, and the duties payable thereon, from ſuch a day to ſuch a day.

Who were to make returns upon oath of the cuſtoms received, and to pay them into the treaſury.

Theſe books were called port books; and from them the ſaid officers or their deputies were twice in every year, to wit, in Michaelmas and Eaſter term, to give and deliver true and exact accounts to the ſaid court of Exchequer upon oath, of all and ſingular the cuſtoms, ſubſidies, impoſitions, and ſums of money, collected and received for his majeſty's uſe; and were alſo at the end of every year

Digitized by Google

year to return the ſaid port books; and the reſpective cuſtomers or collectors were to pay all the money they had ſo collected into his Majeſty's treaſury.

Other officers appointed by the farmers of the revenue.

Thus it continued until the King's revenue was ſet out to the farmers of the revenue, who (as has been ſaid before) appointed officers of their own to receive the duties, inſtead of the patent officers. But yet the patent officers were neceſſary at times in their employments; for there were ſeveral other acts to be done by them which they only can do; eſpecially where the ſeal of the office is required for the more authenticating any act; as in caſes of cockets and certificates, &c. for the commiſſioners of exciſe have no ſeal, nor of courſe the collectors appointed by them.

And by the commiſſioners of exciſe and revenue.

The act of exciſe and new impoſt directs that there ſhall be commiſſioners for that duty not exceeding five in number, and a ſurveyor *, to be appointed by the Lord Lieutenant or other Chief Governors of Ireland, who are to be managers and governors of the office of exciſe created by the ſaid act; with a power, with ſuch approbation of the Lord Lieutenant, &c. to appoint collectors † in the ſeveral

* I do not find that any ſuch officer as ſurveyor of the exciſe at large has been ever appointed under the act. There is ſtill indeed a ſurveyor general of the cuſtoms, ſubſidies, poundage, and impoſitions; but the exciſe cannot be conſtrued to come under any of thoſe denominations, it being an entire diſtinct duty.

† The firſt ſtatute which mentions the collector is the 3 Hen. 6. c. 3. Eng. But Lord Chief Baron Gilbert, in his treatiſe of the Exchequer, is of opinion that by the collector mentioned there is not intended the collector of the cuſtoms, (for that that officer came in much later) but the collector of the ſubſidy of tenths and fifteenths. But this ſeems not agreeable to the very words of the act. And the act of poundage and tunnage, 14 and 15 Car. 2. c. 9. ſeems to conſider the collector of the port or collector of the cuſtoms as an officer before that time exiſting; though whether he were a diſtinct officer or one and the ſame with the cuſtomer does not

Digitized by Google

ſeveral ports of the kingdom to collect the revenue of exciſe. And by the patent of the commiſſioners and governors of the revenue who are ſeven in number, of whom five are eſpecially to manage the exciſe, they are empowered to appoint, and do appoint (amongſt ſeveral other officers) receivers and collectors to receive and collect during his Majeſty's will and pleaſure (amongſt others,) the ſaid revenues ariſing by the ſaid act of poundage and tunnage. And thoſe revenues are accordingly collected and accounted for, and paid in by, the collectors of the ſeveral diſtricts together with the other revenues received by them *.

The

not plainly appear. But it is ſaid that, in general, the ſaid collectors appointed by the commiſſioners of exciſe have been deputed by the cuſtomer and other patentee officers to collect and receive the cuſtoms; and the accounts, in which the cuſtoms and exciſe are blended, are always certified by the two patentee officers, the cuſtomer and comptroller; for by the act of poundage and tunnage the commiſſioners of the cuſtoms have not any power to collect the cuſtoms, nor to appoint any officer for the purpoſe; ſuch a power would have been to the prejudice of the cuſtomer and comptroller, who had patents antecedent to the ſaid act.

* Notwithſtanding the cuſtoms are thus received and accounted for, yet the port books were for many years ſent forth to the cuſtomers and comptrollers from the Chief remembrancer's office, who is entitled to a fee of 10s. for each book; but no return having been made by the ſaid officers for ſeveral years, as by their patents, it was ſaid, they were bound to do, and they and the commiſſioners of the revenue refuſing and declining any longer to pay for the ſaid books, a complaint was made thereof to the court of Exchequer, by one of the Chief remembrancer's ſecondaries, on the 18th of November 1757, whereupon an order was conceived that they ſhould ſhow cauſe why they ſhould not return the ſaid books.

Upon ſervice of which order ſeveral affidavits were made by the deputies to ſeveral of the ſaid patentee officers, and particularly by the deputies to the comptrollers, &c. of Londonderry and Galway, whereby it appeared that no ſuch port books had been delivered to them for many years; and upon examining of ſeveral of the patents it appeared, that there was no ſuch clauſe therein for returning the ſaid books as had been ſuggeſted.

But

Digitized by Google

The duty of the collector of Dublin port is the same with that of the patentee customer and collector, as to making entries and rating all goods imported and exported. Collector of Dublin port his duty.

And after the goods have been so entered and rated by the patentee customer and collector, what they have so done is to be examined by the examinator of the customs; and if they be under rated, it is to be made good by the merchant or officer who rated the entry; if the mistake be to the prejudice of the merchant, he is to have an allowance or draw back in his next entry.

And there are also in every district of the kingdom surveyors of several kinds, to wit of the port, and excise, tide surveyors, &c. who are to direct, instruct, and inspect the several officers inferior to them, in the district, port, or place allotted to them, or which they have the conduct and management of. Surveyors of port, &c.

But however, the said order of the 17th November 1757 was notwithstanding made absolute by an order of the 11th of June 1758; and it was ordered that the several customers and comptrollers of the several ports of the kingdom should return yearly into the Chief remembrancer's office the several port books they should be served with by the pursuivant of the said court of Exchequer, or be attached without further motion; and that the pursuivant should deliver yearly to the several customers and collectors the several port books which should be delivered to him by the usher of the said court, and that he should return the names of such customers, &c. as should refuse to accept or receive the said books, by the first of the then next Michaelmas term.

Accordingly they were delivered by the usher to the pursuivant, and the pursuivant sent them out; but he being entitled to a fee of 3s. 4d. on the delivery of each of the said books, and the customers and comptrollers refusing to pay the same, he would not give them the books; and having made an affidavit of these facts, and thereupon the said matter being on the 26th of February 1759, again brought before the court, it was ordered to stand over until the term following; but nothing further appears to have been done therein.

And

Digitized by Google

Two principal ones in Dublin and their duty.

And on the cuſtom houſe quay in Dublin there are two principal ones, who are to inſpect the other officers employed, to inſtruct them in their duty, and to ſee that they do it; to take an account of all wine and tobacco diſcharged; and to ſee the diſcharge of all goods inward and outward; and if there be any exciſeable goods, not in the book of rates, to value them in the exciſe, after the cuſtomer, comptroller, &c. have rated the cuſtom thereof. And when this is done, and the proper allowances made, the merchant is to draw three entries thereof as they are called, one for the collector, who is to receive both the cuſtom and the exciſe; one for the cuſtomer and collector; and one alſo for the examinator of the cuſtoms, who, if he finds any error or miſtake therein, immediately puts a ſtop to any further proceedings of the merchant until the ſame is rectified. The ſurveyors on the other quays are alſo to inſtruct and direct the other officers on the quays allotted to them, and to examine all boats going up and down the river, &c.

Store keeper, ſurveyor and comptroller of the ſtores their duty.

There are alſo a ſtore keeper, ſurveyor and comptroller in the ſtores, who are to examine all fine and other goods brought into the ſtores before they are diſcharged, and to take an account of thoſe that are not diſcharged.

Tide waiters, land waiters, their duty.

The tide waiter and land waiter, it is ſaid, were formerly but ſervants to the ſurveyor; but they are now commiſſioned officers; and when the tide waiters are on ſhore they are to attend at the tide ſurveyor's office, to be ready at all times to go with him on board ſuch ſhips as he ſhall think convenient to place them in; and when he ſo goes on board he is to rummage the ſhip, and, if he finds any fine goods he is to ſecure them and bring

Digitized by Google

bring them to the ſtores, or to give them in particular charge to officers on board, and to ſend an account thereof to the collector and land waiter; and the tide waiters ſo placed on board are to take an account of all the goods, as they are diſcharging, and to take ſpecial care that none be concealed or ſecretly conveyed away; and that they are delivered to the land waiters, who are alſo to be careful to attend the diſcharging thereof on the quay, and to ſee that the goods and the notes thereof agree. And if there be any fine goods or ſmall parcels in any boat or lighter, the land waiters are to take care that the ſame be immediately put into the ſtores. And they are not to permit any goods either to be laden in, or landed from, any boat or ſhip, without warrant from the collector, except ſuch fine goods, or ſmall parcels; and for theſe they are to have a ſurveyor's direction.

Jerquer, his duty.

And they are to enter all their warrants, and alſo all the diſcharges in a ſtock book; and to keep the warrants by themſelves until the ſhip is diſcharged; and then to deliver them to an officer, who in Dublin port is called the *Jerquer*; who was originally inſtituted in order to bring the maſters and commanders of ſhips to a due method of invoicing; and for this purpoſe he is to compare the tide waiters bill, land waiters diſcharges, and ware houſe note for goods remaining in the ſtore, with the maſters invoice, and to place all down in a jerquing book; and to ſee that they and the maſters entry do all agree; and if any difference be, to note it down, and to make a true return in his jerquing note to the commiſſioners before ſuch ſhip be cleared, *&c.*

Surveyors general of exciſe, their duty.

There are alſo four Surveyors general of exciſe for the whole kingdom, one for each province, who are to viſit

Digitized by Google

the ſeveral diſtricts of the ſeveral collectors given them in charge, as often as they poſſibly can, and therein ſtrictly to examine the ſeveral officers employed; to ſee that they have acted properly, and with activity in every branch of their duty, and to direct and aſſiſt them in all particulars of their buſineſs.

CHAP. VI.

OF PRISAGE.

Priſage what, and how payable in England.

PRISAGE is an ancient duty payable to the Crown by preſcription; and ſignifies a certain quantity of wine taken for his Majeſty's uſe, out of every ſhip importing the ſame. And in England it is due at the rate of 1 tun out of 10; for which the Crown pays the merchant 20 ſhillings, by way of compenſation for freight.

How in Ireland.

But in this kingdom the ſettlement of priſage is as follows, viz. when the quantity of wines imported in any one ſhip amounts to nine tuns, and under eighteen tuns, ſingle priſage or one tun is taken; when ſuch quantity amounts to or exceeds eighteen tuns, double priſage or two tuns are taken; but no money is paid to the merchant.

In kind or in money.

It is either taken in kind, according to its original inſtitution, or a certain ſum is paid in lieu thereof by the importer. If in kind, half the quantity is taken by the proper officers before the maſt, and the other half from behind the maſt. When not taken in kind, the following rates are ſettled, by agreement, to be paid in lieu thereof; and are received and accounted for by the collector of the

port

Digitized by Google

port where ſuch priſage becomes due, in like manner as any other duties due to the Crown.

Rates ſettled by agreement to be paid in lieu of priſage. Rates by agreement.

French wine,	For ſingle priſage,	£30
	For double priſage,	45
Malaga wines and Sherries,	For ſingle priſage,	40
	For double priſage,	60
Canary,	For ſingle priſage,	50
	For double priſage,	75

Priſage wines taken in kind are ſet up to publick ſale by inch of candle, and the produce thereof paid to the collector. There is alſo a cuſtom of 15 ſhillings per tun payable on priſage wines by preſcription; which cuſtom is paid in lieu of all other duties whatſoever by the merchant importer, over and above the priſage or compoſition for priſage, and not by the perſons to whom the priſage is due.

This duty was remitted or altered by Ed. I. in England, with regard to foreign merchants, by impoſing a tribute of 2 ſhillings on every tun of wine imported there, which was called *butlerage*; but this does not extend to this kingdom. Butlerage.

This duty was granted by King Henry II. in the year 1177 to Theobald the ſon of Herveius Walter, to whom the King gave the butlerſhip of Ireland, whereby he and his ſucceſſors were to attend the Kings of England at their coronation, and preſent them with the firſt cup of wine, for which they were to have certain pieces of the King's plate; and from thence it is ſaid the name of Butler is taken. And this duty was confirmed to Priſage granted to the butler.

Digitized by Google

the ſaid family, afterwards earls, marquiſſes and dukes of Ormond, by ſeveral after grants; particularly in the reigns of Edward III. Philip and Mary, and Car. II. and became veſted in the late earl of Arran, by an act paſſed by the Britiſh parliament in June 1721, enabling him to purchaſe the forfeited eſtates of the late James duke of Ormond, his brother.

Agreement concerning it between the crown and Ormond family.

But in proceſs of time, theſe cuſtoms being extremely troubleſome in the collection of them, an agreement was entered into between the Crown and the ſaid James late duke of Ormond in the year 1704, whereby the ſaid duke of Ormond was by deed or inſtrument under his hand and ſeal to empower the commiſſioners of the revenue in Ireland, by their officers, to collect and receive to her Majeſty's uſe and behoof the ſaid duties of butlerage and priſage, for ſeven years from Michaelmas 1704; and in conſideration thereof, the yearly ſum of £3500 was to be paid to the ſaid duke of Ormond, his heirs, executors, adminiſtrators and aſſigns, out of her majeſty's revenues in this kingdom; which agreement was accordingly carried into execution, and her Majeſty's letter and grant accordingly had and paſſed for the ſaid annual ſum. Afterwards, the ſaid duke of Ormond executed a further leaſe to the then commiſſioners of the revenue, on the ſame terms with the former, bearing date the 16th day of Auguſt 1707, for ten years and an half from Michaelmas 1711; and afterwards, by deed bearing date the 19th day of November 1709, the ſaid duties were leaſed for a further term of ten years and an half, to commence 25th March 1722, for the like annual ſum of £3500, which expired at Michaelmas 1732. And in the year 1733, the ſame were leaſed by the ſaid Charles earl of Arran, for three years from Michaelmas 1732, in conſideration of the yearly ſum of

Digitized by Google

of £4000, for which the ſaid earl had the King's letter and grant as aforeſaid; and they ſo continued to be renewed for three years, for ſeveral years; but this being found very troubleſome, the ſaid earl of Arran, in the year 1744, propoſed either to collect theſe cuſtoms himſelf, or to ſet them for a long term, or at the will of both parties; which laſt propoſal was agreed on; and accordingly his late Majeſty K. Geo. II. by his letter, dated at St. James's, 9th April 1744, appointed a yearly ſum of £4000 to be paid to his lordſhip for the ſaid cuſtoms during his Majeſty's pleaſure. And this agreement ſtill ſubſiſts between the Crown and the heir of the ſaid earl.

It is ſaid the Crown is a conſiderable loſer by the farming of thoſe duties of priſage and butlerage; for that they don't amount annually to near the ſum which the Crown ſo pays for them.

Whether priſage wines in the hands of a ſubject are liable to the excise and additional duties.

A queſtion has ariſen, whether priſage wines, in the hands of a ſubject, are liable to the duties impoſed on wines by the act of exciſe 14 and 15 Car. II. c. 8. and the additional duties by ſubſequent ſtatutes; for, by the act of tunnage and poundage, priſage and butlerage are particularly excepted. This queſtion depends on the conſtruction of the act of exciſe, to which the other acts (by which the additional duties on wines imported are impoſed) refer. By the firſt clauſe in the act of exciſe relating to wines a duty is impoſed on all wines imported; ſo that, if it had reſted on that general clauſe, there would have remained no doubt but that priſage wines would have been liable.

But the difficulty ariſes on the ſubſequent clauſe, by which all the ſaid duties are to be paid by the firſt buyer, before

Digitized by Google

before he receives the commodities from the merchant importer; or by the merchant importer, being a ſhop-keeper, retailer or conſumptioner; and it may be ſaid that the grantee of the priſage is neither an importer, nor a buyer from the importer; and that this clauſe explains the former, and confines the duty to ſuch wines only as are bought from the merchant importer, or retailed or conſumed by him.

However on conſideration of the whole act and of the nature of priſage, it is holden by the beſt opinions that the duty attaches immediately upon the importation of the wine; and that the latter clauſe was not intended to diſcharge the duty impoſed by the former, but only regulates the collection, and the manner of payment of the duty in favour of the merchant.

And as this conſtruction ſeems to ſatisfy the words of the act, ſo it is conceived to be reaſonable both with regard to the publick and the grantee. The deſign of the law makers (as appears from the preamble) was to eſtabliſh a certain revenue for the defence and preſervation of the realm; and therefore it ſhould ſeem that the act is to be liberally conſtrued for the benefit of the publick; and priſage being a cuſtom due to the King for wines brought in by merchants, paying by preſcription 20 ſhillings per tun, the grantee retains the full benefit of his grant againſt the importer; ſince his right of taking the priſage wines from the merchant at the preſcription price remains as it did, and is put on the ſame foot with other ſubjects, in caſe of his own conſumption; but in caſe of ſale, he is in no ſort affected by the act, becauſe the duty falls on the buyer; whereas a contrary conſtruction would leſſen the fund deſigned for the publick ſervice, and tax the ſubject to

Digitized by Google

to enrich the grantee, which it is conceived could not have been the intention of the legiſlature.

It is likewiſe apprehended that this conſtruction is warranted by the authority of the judgment in the caſe of Paul and Shaw, in the Exchequer chamber in England, in Hillary term in the 8 Ann, 2 Salk. 617. where the queſtion came to be, whether the grantee of the priſage in England was liable to the additional duty charged on wines by the 9 and 10 Will. 3. c. 4; in which caſe it was unanimouſly reſolved that the grantee was liable. And it is not apprehended that the different penning of the Engliſh and Iriſh acts, in relation to the payment of the duty, will vary the caſe as to the preſent queſtion; the Engliſh act requiring the importer to give ſecurity for the payment of the duty, and giving him the advantage of 10l. per cent. for prompt payment; and the Iriſh act directing the payment to be made by the firſt buyer; or by the importer, being a ſhopkeeper, retailer, or conſumptioner. And it muſt be obſerved that, though from the nature of priſage the grantee may in ſtrictneſs be conſidered as a buyer from the importer, yet he cannot in any reſpect be deemed an importer.

However the duty, if any be due on the exciſe act or additional duties, has not been paid.

CHAP.

Digitized by Google

CHAP. VII.

LIGHT-HOUSE DUTY.

Light-houſe duty, what.

LIGHT-HOUSE duty is a tribute of four pence per tun payable to his Majeſty, by his prerogative, by foreign ſhips trading to Ireland, towards the ſupport of his Majeſty's light-houſes, which are erected here for the ſafeguard of the lives of ſea-faring men, and the preſervation of ſhips and cargoes.

Granted to Sir Robert Reading in truſt for Lady Mountrath.

King Charles the ſecond, by letters patent in the 17th year of his reign, in conſideration of ſervices done by the Counteſs Dowager of Mountrath, then married to Sir Robert Reading, did grant unto Sir Robert, in truſt for Lady Mountrath, a duty of one penny per tun inwards, and one penny per tun outwards, to be levied on all ſhips belonging to ſubjects; two pence per tun in like manner upon all ſhips belonging to ſtrangers; ten ſhillings yearly on fiſhing boats; and upon all French ſhips ſuch a duty as Engliſh ſhips paid at Bourdeaux, provided that it ſhould not be leſs than two pence per tun inwards and outwards; upon condition that he ſhould build and maintain ſix light-houſes in this kingdom.

Another grant to the Earl of Arran under the ſame truſt.

This patent was ſurrendered, and another granted in the 19th year of the ſame reign to Richard Earl of Arran, for the term of ſixty-one years, to the ſame effect and on the ſame truſt.

Several

Digitized by Google

Several petitions were afterwards preſented to the Houſe of Commons of England, particularly from Cheſter and Liverpool, complaining that the ſaid duties were a grievance and burden to trade; whereupon letters patent bearing date the 19th of July, 1672, were made out to Sir Robert Reading, granting him a yearly ſalary of £500 out of the concordatum money; and Sir Robert obliged himſelf by deed not to receive the duties payable by ſubjects; but the duty on foreigners was ſtill payable.

Subjects ſhips afterwards exempted.

In the ſeſſion of 1703, the Houſe of Commons of this kingdom, obſerving this charge of £500, made inquiry into the execution of the covenants of the patent, (which was then become the property of the Earl of Abercorn by his marriage with Sir Robert Reading's daughter) and it appearing that only two of the ſix light-houſes were kept up and thoſe very ill ſupplied and attended, they came to ſeveral reſolutions which they ordered to be laid before his Grace the Duke of Ormond, then Lord Lieutenant. Theſe reſolutions, in January following, were ſent by his Grace to the commiſſioners of his Majeſty's revenue, with orders to make their report in relation to the ſite and coſt of two of the light-houſes; and in April, 1704, their excellencies the Lords Juſtices gave the like orders in relation to the other four.

Reſolutions of the Houſe of Commons concerning them.

In conſequence of the meaſures taken upon the commiſſioners report, the Earl of Abercorn ſurrendered his patent; and Queen Anne, by her letter dated 22d of November, 1704, entered at the ſignet office, did direct the management of the ſaid light-houſes to be put under the care of the commiſſioners of the revenue, and that the expenſes ſhould be paid out of the revenue. But this letter gives

The patent ſurrendered to the Crown.

Digitized by Google

the board no power to erect or maintain light-houſes in any other places but there ſpecified.

New light-houſe at Loophead.

In September, 1717, a memorial of the corporation, proteſtant merchants, and citizens of Limerick was preſented to the Houſe of Commons of this kingdom, upon which they came to a reſolution that the building a light-houſe on or near Loophead at the mouth of the river Shannon would be of extraordinary uſe to the publick, by preventing ſhipwrecks on the weſtern coaſts of this kingdom; which reſolution was laid before his Grace the Duke of Bolton, Lord Lieutenant, who referred all the papers to the commiſſioners of the revenue, with directions to determine the ſituation and expenſe of the intended light-houſe which was accordingly done; and his Majeſty King George the firſt, by his letter of the 25th of April, 1720, entered at the ſignet office, did order that the then commiſſioners of the revenue ſhould defray the charge of maintaining of the ſame out of the revenue at large. But neither doth this letter give any authority to the commiſſioners for erecting or maintaining any new light-houſes; and there are not any light-houſes now maintained out of the revenue but by virtue of theſe two authorities.

How the duty is paid.

The duty above-mentioned continues ſtill payable by all foreign ſhips trading to Ireland, and becomes due immediately upon their arrival in any port in Ireland. But no more than four pence per tun is taken for any one voyage, though ſeveral ports may be touched at in the courſe of it. The payment of it will appear from the receipt or certificate of the collector receiving the light-houſe money, which is given to prevent any diſputes that may poſſibly ariſe about it, on their putting into any other harbour in the kingdom during that voyage.

And

Digitized by Google

And this duty at preſent amounts to about £400 or £500 yearly; and the expenſe of maintaining the ſeveral light-houſes amounts to above double that ſum. The amount of it.

CHAP. VIII.

Of the INLAND EXCISE, ALE, &c. WINE, &c. LICENSES.

THE Inland Exciſe is the duty upon beer, ale, and ſtrong waters, granted to the Crown by 14 and 15 Car. 2. c. 8. after the following rates, viz. Inland exciſe.

For every 32 * gallons of ale and beer, of above ſix ſhillings the barrel price, brewed within this realm by the common brewer, or in his veſſels, or by any other perſons who ſhall tap or ſell out beer or ale, to be paid by the brewer, or ſuch other perſons reſpectively, two ſhillings and ſix pence. On ale and beer.

For every 32 gallons of ſix ſhillings beer or ale, or under that price, brewed by the common brewer, or in his veſſels, or by any other perſons who ſhall tap and ſell ſuch beer or ale, to be paid by the brewer, or ſuch other perſons, ſix pence.

For all aquavitæ or ſtrong waters, diſtilled within this realm, whether of foreign or domeſtick ſpirits or materials, to be afterwards vended, to be paid upon every gallon, by the firſt maker or diſtiller thereof, four pence. On ſtrong waters.

* Which gallon is to contain 272 ¼ cubical inches.

Digitized by Google

Additional duties.

Beſides which perpetual duties there have been ſince granted, and are now payable, the following additional duties, viz.

	l.	s.	d.
For every 32 gallons of beer or ale above ſix ſhillings price,	0	2	0
For every 32 gallons of beer or ale not above that price	0	0	4
For every gallon of aquavitæ, *&c.*	0	0	4

Brewers and diſtillers to make weekly entries.

And all brewers and diſtillers liable to ſuch exciſe are to make weekly entries on every Monday at the exciſe office, of the quality and quantity of all beer, ale, and ſtrong waters brewed or diſtilled the week before; and pay and clear the exciſe, on forfeiture of £20 for the firſt week's neglect, £40 for the ſecond, and £60 for the third; beſides double the value of all liquors ſo brewed or diſtilled by them in ſuch weeks.

Power given the commiſſioners to appoint gaugers.

And the commiſſioners of exciſe have power given them to appoint ſworn gaugers to enter, by night or by day, into any houſes, *&c.* belonging to any brewer or diſtiller, and to gauge their veſſels and take an account of their liquors. And the returns of ſuch gaugers to the commiſſioners or their ſub-commiſſioner ſhall be a charge upon the brewer or diſtiller, if it exceeds the quantity by them entered.

Allowance to common brewers.

Common brewers, in paying their exciſe, are by the act to be allowed 64 in every 704 gallons of beer, and 32 in every 672 gallons of ale, and ſo in proportion for a greater or leſſer quantity by them brewed, free from all duties; which

Digitized by Google

which is to be deducted from their payments, in reſpect of filling, waſte, leakage, returns or other accidents. But inſtead of the above allowances, purſuant to a letter from Lord Wharton, then Lord Lieutenant, to the commiſſioners, dated the 24 September 1709, an allowance of 2 gallons in 22 of ale, and 2½ in 23 of beer, is now given.

Here may be obſerved a material difference between the allowances in import and inland duties. In the firſt caſe, the deductions are always made out of the duty; but in the laſt, out of the quantity. In the firſt, the duty is always charged, and the £5, £6, or £10 per £100, is afterwards ſubſtracted; or if goods are entitled to any abatement on account of damage received, the duty is always firſt paid down, and the allowance is given by way of drawback or repayment. In the laſt, the proportional quantity of liquor is deducted out of the total number of gallons, and no more charged than what duty is really paid for.

Difference between the allowance in the import and inland exciſe.

The gaugers likewiſe, on taking any gauge of warm wort, make an allowance of one tenth part, purſuant to an article in their inſtructions.

Allowance on warm wort.

And by 11 Geo. III. 2. and continued by 13 Geo. III. 2. a duty of one penny per gallon is to be paid out of all cyder which ſhall be ſold or tapped out by retail.

The frauds and abuſes practiſed by brewers and diſtillers require a more than ordinary circumſpection, which has given occaſion to numerous penal laws in relation to them too voluminous to inſert here.

The

Digitized by Google

The officers for managing and collecting thoſe duties are the gauger, ſurveyor, and collector of the diſtrict. The whole diſtrict is divided into walks, to each of which there is a gauger aſſigned.

Gauger, his duty.

The gauger goes round his walk, twice every week; and takes an account of every brewing within it, and of the quantities of each ſort of liquors made at each brewing in that compaſs; this he reduces into gallons, according to which the duty is charged.

Surveyor, his duty.

The ſurveyor of the exciſe goes after the gauger, once in the month, and takes private notes, in his pocket book, of the ſeveral brewings in that month and the quantity and qualities brewed; which are compared with the gauger's book. And every month they both ſign a return to the collector, which becomes a charge on each perſon therein mentioned, according to which the exciſe is received by the collector at his monthly office.

Duplicates of their returns ſent to the commiſſioners monthly.

Duplicates of thoſe returns, ſigned by the collector, gauger, and ſurveyor, are ſent monthly to the commiſſioners of exciſe. They are then examined by an examinator appointed for that purpoſe, (called the examinator of the ſurveyor and gauger's books,) as to the computation of gallons, and calculation of money. Whereupon the examinator makes out a charge againſt the collector, which he tranſmits to the Accomptant general.

The

Digitized by Google

The ALE and BEER LICENSES, and the WINE and STRONG WATER LICENSES form another branch of the hereditary revenue. The duties ariſing from the former were granted by the 14 and 15 Car. II. *c.* which enacts that none ſhall keep any common ale houſe or tipling houſe, or uſe common ſelling of beer or ale by * retail without a licenſe; for which 20s is to be paid to the collector, for his Majeſty's uſe, for every year that the perſon ſhall be ſo licenſed. And no ſuch licenſe is to be granted for a longer term than a year from the Eaſter preceding the date of it. Ale and beer licenſes.

WINE and STRONG WATER LICENSES are founded on the 17 and 18 Car. II. 19. which enacts that no perſon ſhall ſell by retail any kind of wine, aquavitæ, uſquebaugh, brandy, or other diſtilled ſtrong waters, without a licenſe. Wine, and ſtrong water licenſes.

The rate of wine licenſes is ſuch a ſum as ſhall be agreed upon, not leſs than 40s yearly in any caſe, nor exceeding £40 yearly within the city or county of the city of Dublin, nor exceeding £20 yearly in any other part of the kingdom. Rate of wine licenſes.

The rate of ſtrong water licenſes was by 17 and 18 Car. II. to be ſuch ſum as ſhould be agreed upon, not leſs in any caſe than 40s, nor more than £10 yearly within Rate of ſtrong water licenſes.

* Which by 7 Geo. II. 3 is explained to be ſelling by any meaſure leſs than a gallon.

the

Digitized by Google

the city or county of the city of Dublin, nor more than £5 yearly in other part of the kingdom. But by 3 Geo. III. 27. the rate of ſtrong water licenſes within the city of Dublin, and within four miles of the tholſel of ſaid city, was altered to ſuch ſum as ſhall be agreed on, ſo as none do pay leſs than £4, nor more than £10 yearly.

And no licenſe for ſelling wine or ſtrong waters can be granted for any term exceeding three years from the Michaelmas preceding the date of it.

By whom collected.

The power of granting ſuch licenſes, and appointing collectors of the duty, was by thoſe ſtatutes veſted in commiſſioners to be commiſſioned under the great ſeal in each county, and nominated by the Chief Governor or Governors of the kingdom out of the juſtices of the peace and others. But as no ſuch commiſſions were for many years paſt ſubſiſting, the duty was uſually collected by the collectors of exciſe; which power is confirmed to them by 33 Geo. II. 4. by which it is made lawful for the commiſſioners of exciſe or any three of them, and the collectors of the exciſe in their ſeveral diſtricts, to grant ſuch licenſes.

Cyder licenſes.

Beſides thoſe licenſes for ale and beer, wine and ſtrong waters, it is enacted by 11 Geo. III. 2 continued by 13 Geo. III. 2. for two years from the 25 December 1773, that no perſon ſhall ſell by retail any cyder without a licenſe, and that ſuch ſellers ſhall pay a duty of ten ſhillings yearly.

Theſe

Digitized by Google

These licenses and agreements are certified by the gauger and surveyor, to the commissioners of excise, monthly, together with the inland excise, and are a charge on the collector for the duty. Certified to the commissioners of

CHAP. IX.

OF HEARTHMONEY.

SO early as the conquest, mention is made in domesday book of fumage, (vulgarly called smoke farthings,) which was paid by custom to the King for every chimney in the house. Fumage.

But its introduction into this kingdom was by the stat. of * 14 and 15 Car. II. c. 17. and 17. and 18 Car. II. c. 18. by which a duty of 2s. for each fire hearth &c. yearly, was granted to the Crown, in lieu of the court of wards, payable on every 10th of January, at one entire payment, by the occupier, and recoverable by distress and sale of his goods. Hearthmoney what.

* About the same period, viz. 13 and 14 Car. II. a like duty was granted by the English legislature to the Crown. But upon the revolution, hearthmoney was, by a statute of 1 W. and M. Eng. declared to be not only a great oppression to the poorer sort, but a badge of slavery upon the whole people, exposing every man's house to be entered by persons unknown to him; and therefore, to erect a lasting monument of their Majesties goodness in every house in the kingdom, this duty of hearthmoney was taken away and abolished. But this tax, which was created at a time when the proper subjects of taxation were not so well understood as they are now, still remains a most oppressive burden on the occupiers of the wretched hovels in many parts of this kingdom.

Digitized by Google

Who exempt from it.

And from this duty no perſon is exempt, except thoſe who live upon alms, and are not able to get their livelihood by work; and except widows who ſhall procure a certificate of two juſtices of the peace in writing yearly, that the houſe which they inhabit is not of greater value than 8s. by the year, and that they do not occupy lands of the value of 8s. by the year, and that they have not goods or chattels of the value of £4.

Formerly farmed by counties.

This duty was formerly farmed yearly by counties at cant to the higheſt bidder, who gave ſecurity by bond for the payment of his rent, and collected the duty himſelf; and paid in his rent to the neighbouring collector of the diſtrict, who was charged with his bonds.

Now collected by collectors appointed by the commiſſioners of the revenue.

But ſince the year 1704, it has not been farmed, but has been collected by collectors appointed for that purpoſe, which appointment was by the 17 and 18 Car. II. 18. to be by the lord lieutenant or chief governors, and council. However they were conſtantly appointed by the commiſſioners of the revenue, by virtue of a clauſe in their patent for that purpoſe. But ſome doubts having ariſen whether ſuch appointment were ſtrictly legal, by 3 Geo. III. 21. all ſuch appointments were confirmed, and a power was thereby given to his Majeſty, by commiſſion under the great ſeal, to authorize and empower the commiſſioners of the cuſtoms and exciſe, or any three of them, to appoint ſuch officers and collectors.

Who pay it to the collectors of the diſtrict.

And theſe collectors make returns of the number of hearths to the examinator of hearthmoney accounts, who is under the direction of the commiſſioners of the revenue, and

Digitized by Google

and from time to time pay their receipts to the collectors of the reſpective diſtricts in which their walks lie.

The collectors of the diſtricts return the hearthmoney accounts with the other quarterly accounts to the commiſſioners of the revenue, who ſend them to the examinator of the hearth money, who returns yearly a certificate of the charge or produce of each collection to the Accountant general, who lays the credit part of the account before the commiſſioners of the revenue for their approbation; after which it is brought into the general account of each collection, and depoſited in the Auditor general's office, with the remainder of the account.

Who return thoſe accounts to the commiſſioners of the revenue.

The annual produce of this duty at preſent amounts to about £60,000.

CHAP. X.

Of other INLAND ADDITIONAL DUTIES.

BESIDES thoſe perpetual inland duties there are now ſeveral additional temporary duties, which have been granted, from time to time, to the Crown; ſome for particular purpoſes to which they are appropriated by parliament, and others for the ſupport of government generally.

The ſeveral inland temporary duties.

And theſe are upon coaches and other wheel carriages; gold and ſilver plate; cards and dice manufactured in the kingdom; hawkers and pedlars; and on ſtamps.

Digitized by Google

And firſt, as to the duties on coaches and other wheel carriages, of which there are three.

Duty on coaches, &c.

By the firſt, there is payable for 7 years, from 25th of March 1772, for every coach, chariot, &c. with 4 wheels, not uſed for hire, 20 ſhillings, to be paid yearly on the 10th day of January during the ſaid term; and for every chaiſe, chair, &c. with 2 wheels, not uſed for hire, 5 ſhillings yearly, payable as before. The produce of which duty is to be paid by the Vice treaſurer to the commiſſioners of the inland navigation, for the improvement of tillage and other uſeful purpoſes. 11 and 12 Geo. III. c. 4.

A ſecond.

By the ſecond, there is payable for one coach, chariot, &c. with four wheels, which any perſon ſhall keep in his poſſeſſion, 10 ſhillings; and for every coach, chariot, &c. exceeding that number, which any perſon ſhall keep in his poſſeſſion, except hackney coaches and ſtage coaches, from 25th December 1773 to 25th December 1774, or from 25th December 1774 to 25th December 1775, 20 ſhillings, and for every chaiſe with 2 wheels, 10 ſhillings. But no perſon ſubject to the greater, is to be ſubject to the leſſer duty. 13 and 14 Geo. III. c. 1.

A third.

By the third, there is payable for every coach, chariot, &c. with four wheels, which any perſon ſhall keep in his poſſeſſion, except hackney coaches and ſtage coaches, at any time during the ſaid years, 20 ſhillings. 13 and 14 Geo. III. c. 2.

How collected.

And for the better collection of thoſe ſeveral duties, every perſon keeping ſuch coach, &c. is within a limited time to certify to the collector of the diſtrict an account of

Digitized by Google

of every coach, &c. which he ſhall keep; and the ſeveral duties are to be collected and levied by the collectors of the hearthmoney, or by ſuch other perſons as ſhall be appointed for that purpoſe, in the ſame manner as the duty of hearthmoney is collected and levied.

Duty on gold and ſilver plate manufactured here.

As to the duty on gold and ſilver plate, there is payable for ſeven years, from the 25th of March 1772, out of all gold and ſilver plate which ſhall be made or wrought in the kingdom, 6 pence for every ounce troy, to be paid by the makers and workers thereof. Which duty is to be paid to the commiſſioners of the inland navigation. 11 and 12 Geo. III. c. 4.

To be aſſayed and ſtamped, by the aſſay maſter.

And no goldſmith or ſilverſmith is to expoſe to ſale any gold or ſilver plate, until it be aſſayed by the aſſay maſter; and if it be found conformable to the ſtandard, then it is to be touched by the wardens of the company of goldſmiths, and marked with the marks uſed for that purpoſe; and then the ſaid duty is to be paid by the perſon bringing it to be aſſayed and touched; and the aſſay maſter is, upon receipt of the duty, to ſtamp or mark it with ſuch ſtamp or mark as the commiſſioners of the revenue ſhall from time to time appoint. ibid.

Who is to receive the duty and pay it to the Vice treaſurer.

And the aſſay maſter is to make entries, in a book, of the ſeveral quantities of plate ſo ſtamped or marked by him, and the duties received by him, &c. and once in every month to pay all the money received by him to the Vice treaſurer. ibid.

Duties on cards and dice manufactured here.

As to the duties on cards and dice, there is payable during the ſaid term of ſeven years from 25th of March 1772, for every pack of cards made in the kingdom 5 s. to

to be paid by the makers; which duties are to be paid to the commiſſioners of the inland navigation. ibid.

A ſecond on cards.

And there is payable a further additional duty of 6 pence for every pack of cards made in the kingdom, between the 25th of December 1773 and 25th of December 1775. 13 and 14 Geo. III. c. 1.

To be paid to the collectors of the ports.

And the makers of cards in Dublin, Cork, and Limerick, and of dice in Dublin and Cork, to which places reſpectively the exerciſe of thoſe trades is confined, are during thoſe terms, once in every 14 days, to make a true entry upon oath with the collectors of thoſe ports * reſpectively, of all the cards and dice by them made within that time; and are once in 28 days to clear all duties owing by them, by paying the ſame to the collector. 11 and 12 Geo. III. c. 4. 3 Geo. II. c. 12.

Cards and dice to be marked or ſtamped.

And during the continuance of that term no cards or dice are to be ſold, or expoſed to ſale, or played with, until ſuch mark upon the dice, and ſuch ſeal or ſtamp upon the paper and thread encloſing every pack of cards, and ſuch mark upon one of the cards of each pack, ſhall be put, as the commiſſioners of the revenue ſhall appoint in writing, according to a power given them. 11 and 12 Geo. III. 4.

Duty on hawkers and pedlars.

As to the duties to be paid by hawkers and pedlars; there is to be paid by every hawker, pedlar, &c. (except perſons in the act excepted) travelling on foot or otherwiſe between 25th of March 1774 and 25th of March 1776, a duty of twenty ſhillings by the year; and by every

* It ſhould ſeem more agreeable to the nature of the duty to make the entry with the collectors of the exciſe.

perſon

Digitized by Google

perſon ſo travelling with an horſe or other beaſt drawing burden 20s. by the year, over and above the ſaid firſt mentioned duty of 20s. which duties are to be paid by the Vice treaſurer to the incorporated ſociety for promoting Engliſh proteſtant ſchools. 13 and 14 Geo. III. c.

Licenſes to be obtained by them from the collectors.

And every pedlar ſo travelling is, before the 25th of March in each year, to deliver to the collector of exciſe for the diſtrict a note in writing how and in what manner he intends to travel; for which he ſhall then pay the duty; and thereupon obtain a licenſe from ſuch collector to travel or trade. ibid.

Stamp duties.

As to the ſtamp duties; they are a duty impoſed upon all parchments, vellum, and paper, whereon any legal proceedings or private inſtruments of almoſt any nature are written or engroſſed, between the 25th of March 1774, and 25 of December 1775, upon all almanacks, newspapers, advertiſements, and pamphlets of certain forms and ſizes; and theſe impoſts are very various, according to the nature of the thing ſtamped; from ſix pounds to one half-penny. 13 and 14 Geo. III.

Commiſſioners or officers to be appointed for ſtamping, &c.

For the better levying and collecting which duties power is given to his Majeſty, or the Lord Lieutenant or Chief Governor of the kingdom, to nominate commiſſioners or officers for ſtamping and marking parchment, vellum, and paper, and managing the duties thereon, who are to keep their head office in Dublin, and they are empowered to appoint other inferior officers, with the conſent of the Lord Lieutenant, &c. for that purpoſe, and for the collecting and levying the duties. ibid.

And

Digitized by Google

Parchment and paper to be carried to the office to be ſtamped.

And all vellum, parchment and paper, chargeable with the ſaid duties, is, before any of the matters or things in the act mentioned, ſhall be thereon engroſſed or written to be brought to the ſtamp office, to be ſtamped and marked; which the commiſſioners or officers are required to do, on being paid the duty. ibid.

No parchment &c. to be written on, till ſtamped, under penalty of £10.

And if any perſon ſhall engroſs or write upon any vellum, parchment, or paper, any of the matters or things for which the ſaid vellum, parchment, or paper, is chargeable with the ſaid duty, before it be ſtamped, or upon any vellum, parchment, or paper, that ſhall be marked for any lower duty than the legal duty, there ſhall be anſwered and paid his majeſty, for every ſuch deed, inſtrument or writing, the ſum of £10; and no ſuch record, deed, inſtrument, or writing, ſhall be pleaded or given in evidence in any court, or admitted to be good or available in law or equity, until as well the ſaid duty, as the ſaid ſum of £10, ſhall be firſt paid to his Majeſty's uſe, and a receipt produced for it under the hand of ſome of the officers appointed to receive the duties, and until the vellum, parchment, or paper, be ſtamped. ibid.

How the duty is to be paid by the officers who collect it.

And all the officers concerned in the levying and collecting thoſe duties are to keep ſeparate and diſtinct accounts thereof. And the perſons employed to collect and levy them in the city and county of Dublin are to pay the ſame into the treaſury on the firſt monday of every month. And the perſons employed to collect and levy them in other parts of the kingdom are to pay them to the ſeveral collectors of the inland exciſe of the reſpective

Digitized by Google

tive diſtricts. And every ſtamp officer, in ſix days after his making any payment into the treaſury, or to any of the ſaid collectors, is to give notice of the amount of ſuch payments to the commiſſioners of ſtamps. ibid.

Their accounts ſubject to the examination of the commiſſioners of impreſt accounts.

And none of the ſaid duties are to be received or collected by or paid to the ſaid commiſſioners of ſtamps; and the ſeveral perſons who ſhall be employed in receiving, collecting, or paying the ſaid duties are, once in every year, to exhibit their accounts thereof to the commiſſioners for taking impreſt accounts, who are authorized to examine upon oath the ſaid perſons accountants concerning the money raiſed or collected by them, and paid by them into the treaſury or to the collector of inland exciſe; and they are to produce proper vouchers for any ſum raiſed received and paid. ibid.

CHAP. XI.

Of SEIZURES, FORFEITURES, and FINES.

The revenue from ſeizures &c. what.

UNDER this head is comprehended all the revenue ariſing to the crown, by its moiety or ſhare of the produce of all ſeizures, which are condemned and ſold as forfeited under the act of tunnage and poundage, and the act of import exciſe; as well as of fines impoſed for breaches of thoſe laws; to which the ſubſequent acts creating the additional duties uſually refer.

Digitized by Google

Offences againſt the acts of cuſtom and exciſe where triable.

And the offences committed againſt the former act are determinable in the court of Exchequer, by information or action, unleſs when otherwiſe directed by ſubſequent acts. But offences againſt the act of exciſe are tried before the commiſſioners or * ſub-commiſſioners appointed according to that act; from whoſe judgment there lies an appeal to the Lord Lieutenant, or other Chief Governors and privy council, or ſuch as they ſhall appoint under the great ſeal, who are called commiſſioners of appeals.

Goods condemned how ſold.

And in the former caſe goods condemned are ſold by publick cant; in the latter by inch of candle. But the ancient courſe with regard to goods condemned in the court of Exchequer was, after they were appraiſed, to ſell them to ſuch as would give moſt above the value appraiſed at.

Regiſter of ſeizures his duty.

There is an officer called the clerk or regiſter of ſeizures in the port of Dublin, who takes an account of all ſeizures and of the produce of them. And when any ſeizure is returned to him, under the act of cuſtoms, by any ſeizing officer, he is forthwith to ſend a copy of the return (commonly called the ſeizing note) to the commiſſioners of the revenue, who direct their ſolicitor to prepare an information in the Exchequer; when under the act of exciſe, he ſends it to the clerk of the informations for Dublin port, who brings it to the ſolicitor, who prepares an information before the commiſſioners of exciſe.

* The ſub-commiſſioners are uſually the collectors of the diſtrict, the ſurveyors of the coaſt, port, and exciſe, and the Surveyor general of exciſe.

The

Digitized by Google

The regiſter of the ſeizures receives the informer's moiety of all fines and ſeizures for breaches of the exciſe laws in Dublin port, for which he gives a particular receipt; and the King's moiety is afterwards paid to the collector, who gives a receipt for it. And he makes up and paſſes his accounts quarterly with the commiſſioners of the revenue, who examine it with the book of information of ſales, which is atteſted by the ſurveyor of the ſtores and ſtore-keeper. But in all other ports or diſtricts the collectors receive the whole, and, after deducting the neceſſary charges, divide the remainder between the King and informer. The King's moiety of the money ariſing from fines or the ſales of ſeizures condemned in the court of Exchequer is paid by the chief remembrancer, who ſells ſuch condemned goods, into the treaſury; and the informer's moiety is in like manner paid by him to the informer. But the modern uſage is for the chief remembrancer to pay the whole to the commiſſioners of the revenue, who diſtribute it as above-mentioned.

To whom the produce is paid.

CHAP. XII.

Of the MANNER of PASSING COLLECTORS ACCOUNTS.

ALL the branches of the revenue hitherto treated of are accounted for by the collectors of the ſeveral diſtricts in the kingdom in the following manner.

Collectors accounts when and where returned.

Every collector is to return weekly and monthly abſtracts, to the commiſſioners of the exciſe and cuſtoms, of his receipts and payments; and at the end of every quarter he is alſo to return, upon oath, a general account of

Digitized by Google

the receipts and payments for that quarter; which quarterly accounts are to be compared and examined by the Accountant general, and the examiner and comptroller of the collectors accounts of incidents. And at the end of the year, to wit between the beginning of Easter and the end of Trinity term, the whole is to be drawn out; and, when thus drawn out, he passes it first before the Accountant general, assisted by the clerk of the quit rents, where he is charged, as to the quit, *&c.* rents, by the rent roll on record in the Auditor general's office; and he is to give an account of every particular sum received, for what land due, and from whom; the residue makes up the charge. He also gives a particular account of the arrears in the same manner, with the reasons why they are not collected.

Passed before the Accountant general, and how charged, as to quit, &c rents.

As to the customs and import excise, he is charged with the quarterly returns of entries made to the commissioners of the revenue, signed by the customer, comptroller, and himself.

As to customs and import excise.

As to the inland excise, and wine, *&c.* and ale, *&c.* licenses, he is charged with the monthly returns sent to the commissioners of the revenue, signed by the gauger, surveyor, and himself.

As to inland excise, licenses, &c.

As to the seizures, his charge is the clerk of the seizures quarterly accounts, made up and compared by the commissioners of the revenue, and his receipts for the money arising from them.

As to seizures.

As to the hearth-money, he is charged with the accounts of the collectors of the hearth-money, made up with the Accomptant general, and the vouchers for payment made to him by such collectors of hearth-money.

As to hearth-money.

The

Digitized by Google

The diſcharge of the collector of the diſtrict on all theſe branches are Exchequer acquittances produced for payment into the treaſury; the arrears returned, which go in charge to him for the enſuing year; the ſalaries to the commiſſioners and to other under officers; and all ſuch allowance as the commiſſioners of the revenue are by their commiſſions empowered to make; as for ſuits at law where there is occaſion, and the like.

How diſcharged.

The account thus ſtated by the Accountant general is from him returned to the Auditor general with the original vouchers and other matters relating to it.

The account returned by the Accountant general to the Auditor general.

The Auditor general re-examines and abſtracts it under general heads and engroſſes it on parchment, and brings the collector to ſwear it before the Barons of the Exchequer, as is before mentioned.

Who examines and engroſſes it, &c.

The account thus engroſſed and ſworn is filed of record in the Auditor general's office, and the balance on the foot of the accounts is a charge on the collector in his next account.

And files it in his office when ſworn.

CHAP.

Digitized by Google

CHAP. XIII.

OF FINES AND AMERCIAMENTS, AND FORFEITED RECOGNIZANCES; AND THEIR ESTREATS.

Casual revenue of what consisting.

THE casual revenue consists of fines and forfeited recognizances, (commonly called the green wax) custodiam rents, profits of the hanaper, &c. together with some other casualties, as waifs, estrays, felons and fugitives goods, &c. And as none of these are collected by the commissioners of the revenue or their officers, but are all (except the profits of the hanaper) collected by the several sheriffs of the kingdom, and accounted for by them, and paid immediately into the treasury, it will be therefore proper to treat of them distinctly. Besides the matters relative to these casualties are chiefly transacted in the court of Exchequer, where there are several rules and orders made concerning them in no sort relative to the other branches of the revenue.

Fines or oblatas what
Madox 272.
Madox 273.

Madox 315.
Madox 320.
Madox 323.
Madox 327.

FINES (anciently called *oblata* or offerings) and amerciaments made in the early ages a very considerable part of the Crown revenue. The former were originally offerings or gifts to the Crown, for grants and confirmations of liberties and franchises of sundry kinds; for liberty to hold or quit certain offices or bailiwicks; by tenants *in capite* for licenses to marry, or that they might not be compelled to marry; for liberties relating to trade or merchandize; for the King's favour or good will, and that he would remit his anger and displeasure; for the King's protection, aid

Digitized by Google

aid or mediation; to have ſeiſin or reſtitution of lands or chattels; and that perſons might not be diſſeiſed; to be diſcharged out of priſon, and replevied or bailed to the cuſtody of lawful men; for acquittals of various crimes, even homicide; and for a variety of other matter. Madox 329, 332. Madox 332. Madox 341. Madox 344.

But the moſt remarkable head of this branch of the revenue was the fines paid to the crown for proceedings in the King's courts of juſtice; as fines to have juſtice and right; for writs, pleas, trials and judgments; for expedition pleas, trials, and judgments, or for delay thereof; fines payable out of the debts to be recovered. On law proceedings. Madox 293, 296. Madox 308, 309. Madox 311.

Upon conſideration of the nature of which ſeveral fines on law proceedings, it ſeems as if juſtice or right was purchaſed from the Crown. Againſt which miſchiefs a remedy was provided by that clauſe of *magna charta, nulli vendemus, nulli negabimus aut differemus rectum vel juſtitiam*; which clauſe ſeems to have its effect; for though fines for writs and proceſs of law in many caſes were always a part of the Crown revenue, viz. from the time of the conqueſt or ſoon after; and were conſtantly paid after the making the great charter, as before, yet they were afterwards more moderate than they uſed to be before; and the actual denying of right and the ſtopping and delaying of it, which before, upon paying of money or fines, uſed to be práctiſed, were by thoſe charters quite taken away, or by degrees brought into diſuſe. Formerly very oppreſſive. Madox 314.

So that of this great and indeed monſtrous branch of the revenue, ariſing from fines or *oblata* in this ſenſe, all that remain are the duties ariſing to the Crown for ſealing patents and original writs, now uſually called the profits of the hanaper which are treated of hereafter; and poſt fines Now reduced to profits of the hanaper. and poſt fines.

Digitized by Google

fines, ſo called with reſpect to the fines on the original (or premier) fine, which are paid to the Crown on every fine levied of land, *pro licentia concordandi*; which are as much as the premier fine, and half as much more.

Amerciaments or miſericordias. Madox 365.

The revenue ariſing from AMERCIAMENTS or *miſericordias* was anciently ſo like that which aroſe from fines or *oblatas*, as to be ſcarce diſtinguiſhable from it. But they were generally ſet for miſdemeanors or treſpaſſes of different kinds; for diſſeiſins; for breach of aſſize; for defaults or non appearances; falſe judgments; on hundreds for murder or man ſlaughters, for not making hue and cry, *&c.*

In civil actions how aſſeered and eſtreated. 8 Co. 39. b.

But the amerciaments moſt neceſſary to take notice of here are thoſe which were ſet by the court of common pleas in civil actions, either on the plaintiff, *pro falſo clamore*, or on the defendant, for detaining a juſt debt, by giving judgment *quod ſit in miſericordia*. And theſe judgments were delivered to the clerk of aſſize, and by him to the coroner of the county, who, according to the direction of *magna charta*, c. 14. aſſeered or aſſeſſed the amerciaments, and afterwards delivered them back to the clerk of the aſſize; and the judges eſtreated them into the Exchequer.

Now inconſiderable.

But in proceſs of time the coroners in all civil actions kept one certain rule of amerciament, which became ſo inconſiderable a ſum as not to be worth the aſſeering; and therefore they are now never levied.

Fines in criminal proceedings, *&c.*

Fines in criminal proceedings (which is the ſenſe in which they are uſually conſidered at this day, and not in that of *oblata* or offerings) were originally ſet by the King's bench and juſtices in eyre, as ranſoms from impriſonment;

Digitized by Google

ment; and are uſually impoſed by courts of juſtice as a commutation of corporal puniſhment for crimes and miſdemeanors; or for defaults or contempts of parties in ſuits, jurors, &c. or for neglect of duty or miſbehaviour of officers of juſtice.

Eſtreats of fines.

All courts of record, where the fines are not granted away by letters patent, tranſmit the eſtreats of them to the treaſurer's remembrancer's office; and theſe, with the fines and amerciaments impoſed in the Exchequer, were delivered to the clerk of the pipe formerly, who put them amongſt the *nova oblata* on the great roll.

Forfeited recognizances.

Another branch of the caſual revenue ariſes from FORFEITED RECOGNIZANCES, which are bonds or obligations of record acknowledged to the King, conditioned uſually for appearance at the court, to proſecute felons, &c. to preſerve the peace, &c.

Recognizances not taken by conſervators of the peace, &c.

No recognizances were taken to the King by the ancient conſervators of the peace, nor by the ſheriffs or conſtables; but, in caſes that were bailable, the ſheriff or conſtable took an obligation in his own name, but not any recognizance to the King. And the ſheriff bailed to appear at his own torn, and the conſtable to appear at the view of the frank-pledge.

But by juſtices of the peace.

But when juſtices of the peace were appointed, they iſſued their warrant to apprehend the offender; and if it were a bailable offence, they by 3 Hen. VII. c. 3. Eng. bound him by recognizance, either to appear at the aſſizes or quarter ſeſſions, and likewiſe bound over the evidence to proſecute; and, if the offender or proſecutor did not appear, the recognizance was forfeited, and the clerk of

Digitized by Google

the ſeſſions or of the peace reſpectively eſtreated it into the Exchequer.

And of forfeited recognizances.

Alſo recognizances taken for the King in his courts of record, or before juſtices of the peace, are to be eſtreated into the court of Exchequer when forfeited, that proceſs may iſſue on them.

No recognizances eſtreated out of chancery.

But there are no recognizances eſtreated out of the petty bag into the Exchequer, becauſe ſuch recognizances, being for performing decrees of the court of Chancery, are taken to one of the maſters of the court, and not to the Crown; and therefore are ſued there, and nothing is eſtreated. And the ſtatute ſtaple and ſtatute merchant are eſtreated into chancery by the ſtatute, and from thence execution is to go.

Fines with regard to their eſtreats either foreign.

Fines with regard to their eſtreats may be conſidered as of two ſorts; the firſt are called foreign fines, viz. ſuch as are impoſed by the other ſuperior courts of juſtice, or by inferior courts, as the aſſizes and ſeſſions, &c.

Or thoſe impoſed by the court of Exchequer.

The ſecond ſort are thoſe impoſed by the court of Exchequer, in ſuits commenced between parties there; as alſo on officers of juſtice, &c. ſome of which are in the pleas ſide or in the chief remembrancer's ſide, as on ſheriffs, coroners, the purſuivant, &c. for not returning writs or proceſs, or for not bringing in the bodies of perſons whom they have returned taken; others are impoſed in the treaſurer's remembrancer's ſide; as on ſheriffs for not accounting, not paying their tots into the treaſury, or for not clearing their ſeveral accounts when ſtated; as alſo for not returning writs; and on clerks of the Crown and peace, for not returning the eſtreats of the aſſizes and ſeſſions, &c.

And

Digitized by Google

How eſtreated.

And if theſe fines be not reſpited or reduced, (or more properly diſcharged) they are eſtreated by the Exchequer, and the eſtreats of them are made up by the reſpective officers. And ſuch as are on the pleas ſide are to be delivered to the clerk of the eſtreats or ſummoniſter, who is to iſſue them in proceſs to the ſeveral ſheriffs. But thoſe in the Chief and ſecond remembrancer's offices are to be delivered to the clerk of the pipe, in order to be written in charge and iſſued in proceſs. And theſe laſt fines are of more conſequence than thoſe of the pleas or Chief remembrancer's office, and the parties on whom they are impoſed, generally entitled to much leſs indulgence; and yet theſe fines are ſeldom levied, and little or no money is paid into the treaſury for them, as they are generally reduced (or more properly taken off) on paying ſome ſmall ſum to the poor box of the court.

Eſtreats from the common pleas.

The eſtreats from the court of common pleas are delivered to the Barons in open court, by the hands of the judges of that court, the laſt day of each iſſuable term. And in thoſe eſtreats are not only all fines and amerciaments in that court, but all poſt fines on alienations and all the outlawries in that court; and theſe eſtreats are by the Barons delivered over to the ſecond remembrancer and by him ſent down to the clerk of the eſtreats; except the eſtreats of the outlawries, which remain in the ſecond remembrancer's office.

Eſtreats from the King's bench.

And the court of King's Bench, having both a civil and criminal ſide, ought to deliver eſtreats not only of fines ſet on ſheriffs and other officers, in the civil ſide of the court, but alſo of ſuch fines as have been ſet on perſons

Digitized by Google

for criminal offences. But from the acceſſion of his late Majeſty Geo. I. no eſtreats were returned on either ſide, (it is ſaid) for many years; and on both ſides they are ſtill on ſome years unreturned. And in general eſtreats are by no means returned as regularly and punctually as they ought to be, nowithſtanding the following general rules and orders which have been made from time to time for the remedy of this grievance.

Rule 19th, February 1683. Ordered that the clerks of the Crown and peace, and clerks of the markets, ſhall enter their deputations with the clerks of the eſtreats, and in the ſecond remembrancer's office.

Rule 2d, December 1684. Whereas it is obſerved that the ſheriffs, on their appoſals, return many of the clerks of the Crown and peace to have no iſſues to anſwer the fines on them for not returning their eſtreats in time, whereby his Majeſty is much damnified; for prevention thereof, it is ordered, that the clerk of the rolls do ſend a liſt of the names of the clerks of the Crown and peace to the ſecond remembrancer's office, that purſuivants may iſſue; and that their ſeveral deputies be required to enter their deputations in the ſaid ſecond remembrancer's office, that it may be certainly known againſt whom to iſſue attachments.

Rule 28th, November 1692. Ordered that the ſeveral clerks of the Crown and peace do enter their patents and deputations in the ſummoniſters office; and that Mr. Chetwood do give them notice having undertaken to do it; and that the Chief remembrancer do certify the names of ſuch of the clerks of the Crown and peace as have entered their patents with

Digitized by Google

with him, or their deputations with the ſecond remembrancer and ſummoniſter, and a liſt of thoſe who have not entered them.

Ordered that all the clerks of the Crown and peace do return their eſtreats to the ſecond remembrancer, and that he deliver them to the clerk of the eſtreats; and that after ſo returning them the ſecond remembrancer do forbear further fining; and that, when the clerks of the Crown and peace move to take off, the fines impoſed before the returning the eſtreat to the ſecond remembrancer they produce a certificate from the ſummoniſter. Rule 30th, June 1694.

The court taking notice that, for ſome time paſt, the ſeveral eſtreats of fines forfeited recognizances, &c. returned into this court, have been firſt lodged in the ſummoniſter's office, whereas regularly the ſame ought, by the ancient method of the Exchequer, to be firſt delivered into the ſecond remembrancer's office, and entered there, and to be tranſmitted by the ſecond remembrancer, to the ſummoniſter, and proceſs to iſſue from thence firſt thereupon, and ſo forwards to the other offices; it is thereupon ordered by the court that, for the future, all eſtreats of fines and forfeitures whatſoever be returned into the ſecond remembrancer's office and entered there, and from thence transferred to the ſummoniſter, who is to give a receipt for the ſame, and to iſſue proceſs as uſual. And it is ordered that the ſummoniſter do not receive any eſtreats, nor iſſue any proceſs thereon, until the ſame are firſt tranſmitted to him from the ſecond remembrancer. Rule 26th, April 1708.

The

Digitized by Google

Rule, 22d November, 1708.

The Lord Chief Baron having taken notice of the inconveniencies that are occaſioned by the neglect of the clerks of the Crown and peace, and alſo of the commiſſioners of oyer and terminer, in not returning the ſeveral eſtreats of fines impoſed at the aſſizes and ſeſſions in the ſeveral counties in this kingdom; it is this day made a ſtanding rule of the court that all the commiſſioners of oyer and terminer, and the clerks of the Crown and peace of the ſeveral counties of this kingdom, do return the eſtreats of all the fines impoſed at the ſeveral aſſizes and ſeſſions into the ſecond remembrancer's office, the next term after the ſame are impoſed; that is to ſay, the fines of Lent aſſizes and ſeſſions before the laſt day of Eaſter term following; and the fines impoſed at the ſummer aſſizes and ſeſſions in Michaelmas term following; or in default thereof the ſecond remembrancer is ordered to move the court the firſt day of the following term to have them fined for their neglect.

And in purſuance of this rule it appears that the prothonotary and clerk of the Crown have been fined in the Exchequer for their neglect in not returning theſe eſtreats.

Power given the court to amerce clerks of aſſize, &c. for neglecting to return eſtreats.

And by ſtat. 12 Geo. I. c 4. it is made lawful for the Barons of the Exchequer to amerce clerks of aſſize, clerks of the peace, or other perſons to whom it may belong to make returns of eſtreats into the ſaid court of Exchequer, for neglecting or omitting to perform their duty in returning the ſaid eſtreats, and to cauſe the ſaid amerciaments to be levied by ſuch means as other amerciaments ſet in the ſaid court have been uſed to be done.

And

Digitized by Google

And the court will amend the eſtreat of a fine in ſome caſes, as was done in the caſe of the King againſt John Henderſon; who being fined £30, for a miſdemeanor, by the juſtices of the county of Down, which was afterwards reduced by them to £15, but by miſtake of the clerk of the peace the whole was eſtreated, it was ordered by the court that the proceſs be amended according to the juſtices order. 4th May, 1678.

Eſtreats amended on account of the miſtake of the clerk.

A man who lived within the liberty of the archbiſhop of Canterbury was fined by the judges of oyer and terminer in Southwark for a miſdemeanor in court, which fine was eſtreated; but no notice was taken in the eſtreat of what place the man was; therefore Sir Conſtantine Phipps moved that the eſtreat might be amended by adding the place where the man lived, that the archbiſhop who had the grant of the fines *tam integre tenentium quam non integre tenentium infra*, &c. might come before the foreign appoſer and claim this fine by virtue of his grant; and ſaid that a man had been indicted and fined in Eſſex, which fine was eſtreated here, and ſuch an amendment made upon application; but to this it was ſaid, there was an addition in the indictment which was a guide to the court, being a record to amend the eſtreat by; but here is a record for the King, and nothing but an affidavit on the other ſide; and the court refuſed to do any thing on the motion. June 26th, 1718, in the Exchequer in England. The King againſt the archbiſhop of Canterbury.

Or when there is a record to amend by. Bunb. 2.

So the party has been in ſeveral caſes admitted to plead or demur to an eſtreat. As where a perſon pleaded to the eſtreat of a recognizance, that the juſtice of the peace did not take it in the county where he was a juſtice; to which

Plea to an eſtreat of a recognizance.

Digitized by Google

which the Attorney general demurred generally; and the defendant joined in demurrer. Mich. 1663, in the revenue ſide of the Exchequer here. The King againſt Mc. Cleary.

The ſike.

So where Oliver Keating, being fined, as clerk of the peace of the county of Longford, for not returning eſtreats of the ſeſſions, applied to the court for liberty to plead to the eſtreat, upon affidavit that another perſon, and not he, was clerk of the Crown and peace of ſaid county; and the court granted it. Michaelmas 1668, in the ſame court. The King againſt Oliver Keating.

Demurrer to an eſtreat of a fine, and rule for the Attorney general to join in demurrer.

So where the defendant demurred to a fine of £500 on him impoſed in the court of common pleas; and it appearing by affidavit that his Majeſty's Attorney general was attended with a copy of the demurrer, a day was appointed by the court for the Attorney general to join in demurrer. Same term, the King againſt Henry Nugent.

A plea to an eſtreat of a fine impoſed at a ſeſſions that the defendant was not within the juriſdiction of the ſeſſions.

Arthur Ward was fined for not attending as a jury-man at the general ſeſſions of the peace held for the city of Dublin at the tholſel of the ſaid city; which being eſtreated into the Exchequer, the ſaid Arthur Ward pleaded to the eſtreat that he was an inhabitant of St. Mary's abbey in the county, not within the juriſdiction of the court, and therefore not bound to attend. To this plea the Attorney general replied, that the ſaid Arthur Ward was, at the time of the ſaid fine, an inhabitant of Mary's abbey in the pariſh of St. Michan, ward of Oxmantown, and county of the city of Dublin, and within the juriſdiction of the court; and judgment and execution were afterwards had againſt the defendant for want of a rejoinder. Trin. 26 Car 2. King againſt Ward.

Mathew

Digitized by Google

Plea of matter of excuſe to an eſtreat of a fine impoſed at a ſeſſion.

Mathew Halley, clerk of the peace for the city and county of Londonderry, was fined the 16th of October, 1674, for not appearing and attending his office at the ſeſſions of Newtownlimavaddy in the ſaid county; which being eſtreated into the Exchequer, he pleaded a grant by letters patent of the office of clerk of the peace of the city and county of Londonderry; alſo a patent to the corporation of Derry to hold the ſeſſion of the peace there and not elſewhere, and that it accordingly had been ſo held; that three juſtices of the peace iſſued a precept to the ſheriffs of the city and county of Londonderry for a ſeſſions at Derry, and that other juſtices had iſſued another precept for a ſeſſions at Newtownlimavaddy, and that he attended at Derry. And upon the Attorney general's examining the plea and the patents; and it appearing to him therefrom, and from the eſtreats of the other juſtices, and affidavit of the clerk of the peace, that the ſeveral facts in the plea as ſet forth therein were true, he cauſed a *noli proſequi* to be entered on the record. Trin. 27 Car. 2. The King v. Mathew Halley.

So, in the ſame year and term, the ſheriffs of the city and county of Londonderry were in like manner fined by the ſame juſtices for not attending them as aforeſaid, and like proceedings had.

And in the ſame term and year ſeveral fines to the amount of £2220 having been impoſed on the ſheriffs of the county of Londonderry, and others, at the ſeſſion of the peace held at Newtownlimavaddy in the ſaid county, it was ordered by the court that the eſtreats of the ſaid fines ſhould be ſtaid from the file till further order; and

Digitized by Google

on the 9th day of December following, on motion of his Majesty's Attorney general, they were ordered to be filed.

And on the 14th day of February, 1674, it was ordered that the said fines should not issue in process until the second day of the then next Easter term, by which time the defendants were to plead thereto.

A like plea to an estreat of a fine imposed at a session.

John Eustace and Maurice Eustace, clerks of the peace of the Queen's County, were fined by two of the justices of the peace for the said county, in a considerable sum, for not attending a general sessions of the peace held in and for the said county, on the 10th day of January 1675, to do their office; which being estreated into the Exchequer, the said John and Maurice pleaded to the said estreat, that they on that day attended the sessions held before other justices; whereupon the like proceedings were had as in the former case Trin. 1675, the King against John and Maurice Eustace.

So, in Hillary term in the same year, John Sandes high sheriff of the said county, was in like manner fined by the said two justices for not attending them; and the like proceedings had.

Plea to an estreat of a forfeited recognizance taken in K. B.

Thomas Roche having been bound in a recognizance in the King's bench in Michaelmas term, 1754, to appear in the same term, and prosecute Peter Hamilton in the said court for divers charges and offences, and not to depart the court without license; and having made default, in not appearing pursuant to his said recognizance; and the same having been therefore estreated into the Exchequer; the defendant made special application to the court for liberty to plead to the recognizance, and to the estreat and

Digitized by Google

and proceſs grounded thereon, and that the ſaid proceſs might be ſtaid; which motion came on in Hillary term 1755. And although the queſtion then was whether the defendant had a right to plead, and not whether the plea he ſhould plead was maintainable or not, yet the latter was firſt entered into: and it was urged on behalf of the defendant, that the recognizance had not been forfeited, for that the defendant had appeared purſuant thereto in the ſaid court of King's bench in Michaelmas term 1754, and was then and there ready; day after day, to proſecute the ſaid Peter Hamilton for the ſaid charges and offences, but was not during the whole term called upon for that purpoſe; and that the recognizance dropped for want of being continued; and that the court could not continue the recognizance againſt the conſent of the bail, nor extend the time in the condition; that the ſubject has a right to plead to fines and amerciaments, and by ſtat. 5 Rich. II. Eng. to any debt due to the crown; (by ſtat. 33 Hen. VIII. Eng. he may plead an equitable plea,) that the recognizance was not eſtreated truly or fully enough; that it was imperfect, in not ſaying when default was made; that ſuch plea would not be an averment againſt the record, for that the eſtreat is not a record; that eſtreats and proceſs have been both ſtaid and amended; and that a *ſcire facias* ſhould have firſt iſſued, to ſhow cauſe why execution ſhould not iſſue, and it was compared to the caſe of fines in ſeneſchals courts; that there is no neceſſity of ſhowing to the court what is intended to be pleaded; for when the plea comes in, if it be frivolous, it may be ſet aſide, or demurred to; if not ſo, it may be replied to; and Hard. 409, 471. Sav. 53. 2 Leon. 55. 1 Ld. Raym. 243 Lane 55. 4 Co. 71. Comb. 385, Maddox 367. 370. and the caſes before mentioned were cited.

Digitized by Google

On the ſide of the Crown it was argued that the application was unprecedented; that none of the caſes quoted came up to the preſent one; for they all were either 1ſt, where there was a defect of juriſdiction in the court below; or 2d, where ſome matter of excuſe *in pais* was to be pleaded which was not an averment againſt the record; or 3d, caſes of fines impoſed, which ſtand upon other principles.

1ſt. The caſe of M'Cleary, in 1663, was a plea to the eſtreat that the juſtice of the peace who took the recognizance did not take it in the county where he was juſtice; that this turned on its being no recognizance for want of juriſdiction, and did not contradict the judges certificate. The like of the caſe of the King againſt Ward, 26 Car. II. a fine impoſed at the ſeſſions of the city of Dublin on an inhabitant of St. Mary's Abbey, which was alleged not to be within the juriſdiction; and the caſe in Hard. 471. was of a fine in a court leet for breach of a by law.

That in the preſent caſe there was not any queſtion of the juriſdiction; the court eſtreating, though called by the other ſide the court below, being the ſupreme criminal court of the kingdom; and that though this was mentioned to be like fines of ſeneſchals courts, and the counſel for the defendant were for treating it with the ſame reſpect only, yet the caſes were widely different; the preſumption being in favour of ſuperior courts; otherwiſe of inferior courts; and therefore it muſt be taken that the Kings bench had power to make the eſtreat, and have done rightly; and that their proceedings cannot be reverſed by any court in this kingdom.

2dly,

Digitized by Google

2dly, That Savil 53. was a plea of a matter *in pais*, which was an excuſe, and did not contradict or aver againſt the record; and ſo were all the precedents out of this court. That what was here deſired was expreſsly an averment againſt the record; which, though it may be as to inferior courts, cannot as to ſuperior. Thus, to a preſentment delivered in a ſeſſion and received, no averment lies that it was not aſſented to by 12; but it is otherwiſe of the preſentment of a court leet; for the party diſtrained may aver that it was not preſented by 12. 1 Hawk. 130. 2d. ditto 162. Lib. aſſize 38. 21. Bro. abr. tit. record, pl. 45. a record of outlawry of divers perſons was certified into the Exchequer, among whom one was certified who was really not outlawed; and, on his goods being taken in proceſs, he came, and ſaid that he was not outlawed; and parcel of the record came by writ of Chancery out of the court of King's bench into the Exchequer; and Green, one of the juſtices of the King's bench, ſaid he was not outlawed, but that it was a miſpriſion of the clerk. Shipwith (who was then chief Baron) ſaid "although all the juſtices ſhould record the reverſal they ſhall not be believed, when we have the record that he is outlawed." 4 Co. 71. Hyne's caſe, one of the reſolutions is that there can be no averment againſt the record, though any may be taken which ſtands with it; for the record ſhall not be tried by *pais*.

That the eſtreat, though perhaps not a record to all purpoſes as in caſe of fines, for as to them it is only a minute of the judgment, Lane 55, (as where on a conviction of recuſancy, *prout patet per eſtreat* was pleaded in abatement, it was held ill, 1 L. Raymond 243.) yet, as to others, it is a record for the revenue; it is a record of the default

Digitized by Google

default below, the only record of it. That 4. Co. 71. says nothing of an estreat. The fact of appearing or not can be no other way tried than by the record; nor can any *scire facias* lie on the recognizance for this forfeiture even below; so that the council for the defendant must mistake in saying they could have pleaded to a *scire facias* below. That this case of non appearance stands on another footing than other forfeitures, as it is a fact immediately within the knowledge of the court, and therefore requires no further information; consequently no *scire facias* necessary, as where the forfeiture is occasioned by an act not within their immediate knowledge; and that the same holds where an excuse is to be pleaded. So if the recognizance be for appearance, and in the mean time to be of good behaviour, this forfeiture must appear on *scire facias*, or by conviction on an indictment, before it can be estreated. So where collateral matter of excuse is pleaded, as death of principal, Savil 53. or his being forceably taken away, Hunt's case Comb. 385. but that these are not like the present case, for they all are consistent with the record in admitting the non-appearance and excusing it.

3dly, That the cases of fines imposed are not applicable, for the record is not contradicted by the plea, which admits the imposition of the fine though it disputes the cause or authority of imposing it.

That the application was therefore *primæ impressionis*, and its never having been made is an unanswerable reason against making it now. That of necessity credit must be given to the relation of courts of their own acts; it is the only proper proof and there never was an instance of a jury's trying it. That many judgments have been given by

Digitized by Google

by default, and many writs of error brought on them, and ſometimes errors in fact aſſigned; but it never was aſſigned for error that defendant did not make default, nor can it be aſſigned; for how can it be tried but by the record? and that has ſet it out to be ſo; ſo that a *certiorari* would ſignify nothing; but that there is a diſtinction as to inferior courts. That Beaumont's caſe, 2 Leon 55. was thus; Note, it was holden by all the barons of the Exchequer, that a duty, which is not naturally a debt but by circumſtances only, as debt upon a bond for performance of covenants or to ſave harmleſs, may be aſſigned over to the Queen for a debt; but in ſuch caſe a preſent extent ſhall not iſſue, but a *ſcire facias* ſhall iſſue forth, to know if the party hath any thing to plead againſt ſuch aſſignment. But that was not like the preſent caſe; for what averment is there in it againſt a record? the party before aſſignment would have had a right to plead; for the plaintiff muſt have ſued and declared; but that no ſuit could have been on this eſtreat below. That this diſtinction of pleas was conſiſtent, and would rule and account for all the caſes.

That an application to the commiſſioners of reducements is the uſual method to mitigate both fines and eſtreated recognizances; but they never do it, till the parties ſtand a trial; which was the true reaſon of this extraordinary application.

As to the objection that the recognizance was not eſtreated truly or fully enough as it does not alledge when the default was, it appears that the condition was to appear in Michaelmas term, when it was reſpited to Hillary term, and the default was then; and as to what was ſaid of its having dropped for want of being continued, the

Digitized by Google

the rule ſhowed the fact to be otherwiſe: that if the party be not diſcharged the recognizance continues of courſe, the condition being not to depart without licenſe. Farreſly 97. Owen and others of the city of Coventry were bound by recognizance, and appeared for two terms, and no proſecution being againſt them, it was moved to diſcharge their recognizance, or diſpenſe with their appearance; but the court ſaid they could not do it, and that all they could do was to reſpite their recognizance continued for more than a term. Regina verſus Redpath. Forteſcue 358. Ca. law and equity, 152. And that as to the objection that the court could not continue the recognizance againſt the conſent of bail, that is true, if bail deliver the principal in court and deſire to be diſcharged, which was not this caſe; elſe the court may continue them. That poſſibly the defendant might have applied for a pardon, and that therefore, ſince ſome things may be pleaded and others cannot, a previous application for leave to plead and ſtop the proceſs becomes neceſſary; and it muſt on ſuch application be ſhown what plea is intended, as on leave to plead double matter; but that the plea mentioned by the counſel for the defendant being a direct averment againſt the record ought not to be received.

That as to what was inſiſted on, that it need not be ſhown to the court what is intended to be pleaded; for that when the plea comes in, if frivolous, it may be ſet aſide or demurred to; if not, it may be replied to; in anſwer thereto, the application for leave proves the granting it diſcretionary, and the ſtopping the proceſs is confeſſedly ſo, and therefore the diſcretion of the court muſt be determined by the conſideration whether the party be entitled to relief; and this neceſſarily obliges him to inform the court what his excuſe or caſe is, or, in other

Digitized by Google

other words, what plea he intends to put in. If the plea, being true, will be a good one, he ought to be admitted to plead; but if the plea offered be ſuch as by law he cannot be admitted to prove, (which was the preſent caſe) or, being true, is no foundation or cauſe to relieve, the court in either of theſe caſes ought not to receive the plea or ſtop the proceſs; and that even ſuppoſing ſuch ſham plea ſhould be admitted, it is not a conſequence that the proceſs ſhould be ſtopped.

That if this be a matter of favour the party ſhould be in court to aſk it. Where parties are convicted the court never ſuffers motions in arreſt of judgment or for new trial but in the priſoner's preſence, in order that if the motion goes againſt him the court may have him in their power.

Upon the whole, the court were of opinion that the plea ought to be laid before the court; which was accordingly done, and ſerved on the ſolicitor for the Crown; to whereupon, and on hearing counſel on both ſides, and it being admitted that pleas in ſuch caſes had been received, the court were of opinion it was reaſonable in this caſe, and accordingly ordered it to be received, and that all things ſhould ſtop till further order.

The plea was, that the defendant had appeared in the ſaid court of King's bench purſuant to the condition of his ſaid recognizance, and was then and there ready to proſecute the ſaid Peter Hamilton as he was alſo bound to do. It was then conſidered whether the plea was to be replied or demurred to; and upon conſulting Sir Robert Henley then Attorney general of England thereon, he was of opinion that the plea was bad and ſhould

Digitized by Google

be demurred to; that it tended to falsify the record or (which is more absurd) to join issue upon a matter in law to be tried by the country; for that it seemed to be intended to try the effect of the recognizance by a jury. That if the estreat was irregular it should have been set right by an application to the court; but that it seemed to be regular, and upon the whole of the case the recognizance to be forfeited.

Accordingly a general demurrer was afterwards filed, and the plea with leave of the court was afterwards amended; but the defendant having consented to judgment, and applied for a *nolli prosequi*, and the Attorney general here being made acquainted therewith, and consenting to the process being stayed, the same was stayed; and in Trinity term 1770, an order was conceived on a motion made by the Attorney general for the defendants, on the warrant of the Lord Lieutenant that the same should be received, and that satisfaction should be entered on the record of the judgment against the defendant and his bail, and that their recognizances should be discharged pursuant to the said order. The King against Roche.

May be reduced either before or after they are estreated.

But all these fines, *&c.* as well foreign, as those imposed by the Exchequer in suits commenced in either side of the court between party and party as aforesaid, may be reduced as well before as after they are estreated.

Reducements by commissioners of reducements.

But if the foregoing fines cannot be reduced by the court of Exchequer, as the court of Exchequer, they may be reduced by the commissioners of reducement, who are the Lord High Treasurer, Chancellor and Barons of the Exchequer, in presence of one of the King's

Digitized by Google

King's council, and are appointed by commiſſion under the great ſeal; and upon a petition to them, they at their diſcretion reduce the ſaid fines, generally to a very ſmall ſum, often to ſix pence; which being paid into the treaſury, and the ſeveral officers being ſatisfied their fees, the party is no further troubled or moleſted *.

Fines impoſed by the Exchequer, how reduced.

And the fines impoſed by the court of Exchequer are entirely under their own power; and are either reſpited or reduced (more properly diſcharged) on conſents from the attornies concerned, and upon motion thereon. But if they are reduced (or rather diſcharged) it is upon paying ſome acknowledgment into the poor box of the court; which was originally intended for the uſe of the poor, but afterwards came to be equally divided among the Barons, except ſuch part as they thought proper to give among the poor. And originally the court uſed to barter with the attornies for they ſums the ſhould pay on diſcharging theſe fines; which ſeldom exceeded a piſtole, or at moſt two or three, be the ſum to which ſuch fine amounted ever ſo great. But in the year 1716, the court thinking it below their dignity thus to barter with the attornies for the poor box money, a rule or declaration was made (as it is before ſaid, tho' no ſuch rule is to be found in the ſecond remembrancer's office,) that none of theſe fines ſhould be reduced for the future unleſs

* In the caſe of the King againſt Thomas, Eaſter term 1752, the Chief Baron ſaid that where a fine is properly impoſed, but there are ſufficient reaſons for reducing it, this muſt be done by petition to the commiſſioners of reducements; but that where there is a miſtake in the eſtreating of any ſum either by fine or recognizance, the court, as the court of Exchequer, may upon motion and affidavit of the facts, and without any petition, order it to be diſcharged; and this order is to be entered on the roll.

Digitized by Google

ſixpence per pound were paid to the poor box for the firſt hundred pounds, and threepence per pound for every other hundred pounds, of ſuch fines. But in a committee of the Houſe of Commons of this kingdom, on the 6th day of November 1723, it was reſolved that this rule was obtained from the court of Exchequer by ſurpriſe and was a grievance to the ſubject; ſince which time the poor box money on ſuch reducement is paid much in the ſame manner as it was originally and before the ſaid rule of court was made.

No part of them paid into the treaſury, unleſs levied by the Sheriff.

But no part of theſe fines is ever paid into the treaſury, except they are iſſued in proceſs and levied by the ſheriffs, which (as is ſaid before) very ſeldom happens; and even in this caſe, the clerk of the pipe ſeldom *debets* them, but lets them remain a continued charge on the ſheriffs. But the court of Exchequer may reduce or diſcharge them, even after they are eſtreated by them, upon conſent of attorney and upon motion thereon, or for ſuch other reaſon as they ſhall think meet.

Often kept on foot by management.

But theſe laſt mentioned fines are often kept on foot for years, by the management of attornies in procuring conſents for reſpites; which reſpites are often kept by the attornies, and revived from time to time, as occaſion requires; and, it is feared, have been ſometimes fictitious. Theſe improper proceedings not only take up much of the time of the court moſt unneceſſarily, but are alſo productive of great miſchief and inconvenience to the publick by the delay and failure of juſtice, which muſt of courſe be the conſequence. Beſides they often have been very prejudicial to high ſheriffs, who are generally ſtrangers

Digitized by Google

ſtrangers to theſe reſpites until the ſecurities for their ſub-ſheriffs, by management between the ſub-ſheriffs and the attornies of the courts, become inſufficient; therefore when theſe fines amount to forty pounds, or ſome certain ſum, they ſhould never be reſpited further than the next ſitting of the court, and ſhould then be taken off or abſolutely eſtreated.

Ordered by the lord chief Baron and the reſt of the Barons, that all and every perſon and perſons that ſhall hereafter obtain any rule either for reſpite or diſcharge, ſhall take out their orders the ſame term, or at the fartheſt before the laſt of the eight days after every term, and enter the ſame with the officers where the ſaid debts are in charge; otherwiſe no orders ſhall be drawn thereon; except upon further motion the court ſhall give order for the ſame. Rule 21 Nov. 1664.

Ordered that all parties do take out their orders of reducement, and pay in their money in ſix weeks, or loſe the benefit thereof. Rule 8 Dec. 1680.

Ordered that in all orders of diſcharge, or orders of reſpite, there be inſerted a clauſe, that the ſaid orders be entered with his Majeſty's commiſſioners of the revenue, without paying any fee for the ſame, or they to give out any copy thereof to the prejudice of the treaſurer's remembrancer's office. Rule 17 Dec. 1684.

Ordered that all perſons who ſhall obtain any order for reſpite, reducement, or diſcharge of any charges which have iſſued in proceſs againſt them, be obliged to proſecute and pay ſuch reducements the ſame term ſuch rules are obtained, or within eight days after; and that ſuch rules Rule 5 Mar. 1684.

as

Digitized by Google

as are obtained after term be profecuted as aforefaid by the laft day of the term following, or to have no benefit of the faid rule; whereof all officers and perfons concerned are to take notice.

Rule 28 Nov. 1752. Ordered by the court that for the future no fines impofed on any fheriffs for not returning writs directed to them fhall be reduced, without producing an affidavit affigning the caufe wherefore they delayed returning the fame; and this to be a ftanding rule on every fide of the court.

Rule 24 July 1772. Ordered that all confents and affidavits for the refpiting of fines impofed by this court upon fheriffs, officers, and miniſters of the court, and others, for their neglects and defaults, fhall be filed in the fecond remembrancer's office on or before the day but one next preceding the firft revenue day after every iffuable term.

This branch of the caſual revenue is of much more conſequence to the publick than it is generally underſtood to be; and if more attention was, than is at preſent, given to the management of it in its ſeveral ſtages, by thoſe who are concerned therein, it would, beſides the increaſe of this branch of the caſual revenue, much contribute to promote that due execution of the laws which is ſo much wanted in this kingdom, and to the preventing the many riots, bloodſheds, and murders, for which it is at preſent noted; but as in many other inſtances it happens that the wiſeſt regulations have been fruſtrated and rendered nugatory by the neglect of ſome ſubordinate ſpring, which in the grand machine ſeemed ſcarcely worth attending to, ſo it is in regard to theſe fines and recognizances; for it too often happens, from want of due attention to the latter,

Digitized by Google

latter, that neither the addition or places of abode of the parties who are bound to profecute offenders, are inferted therein; or that if they are, they are omitted in the eſtreats; or that perſons of no property, credit, or repute, and often perſons under fictitious names are taken as bail for the moſt atrocious offenders; ſo that proceſs is iſſued againſt them, at great expenſe to the Crown, to no purpoſe, and the publick juſtice of the kingdom, in this moſt eſſential branch of it, either abſolutely defeated or greatly obſtructed.

Now the prevention of this miſchief is much in the power, and indeed is a part of the duty of the juſtices of the peace, by being careful to aſcertain the proſecutors of offenders brought before them, by their additions and places of abode, and binding them in a ſufficient ſum to appear and proſecute; and by taking due care not to accept any perſons as bail without full knowledge of their credit and ſufficiency. And it is alſo to be wiſhed that the ſame caution and preciſion were uſed, whenever a perſon is fined for an offence by a court of juſtice.

And for the enforcing of this a late rule has been made, viz.

Ordered, upon motion of Mr. Attorney general, that the ſeveral clerks of the Crown and peace of the kingdom, do for the future inſert in their eſtreats the additions and places of abode of the ſeveral perſons mentioned therein, who have either been fined or have forfeited recognizances. And that when ſuch additions or places of abode have not been mentioned in the recognizances which have been taken by the juſtices of the peace, they do ſo mention it in their returns, with the names of the

Rule 2 June 1772.

Digitized by Google

the juſtices who took the recognizances. And that on all fines hereafter to be impoſed in any of his Majeſty's courts of record in Dublin or elſewhere, commiſſions of oyer and terminer, as alſo at the aſſizes and ſeſſions, and other courts where fines or amerciaments are uſually laid or impoſed, the ſeveral clerks of the Crown and peace, or other proper officers, do immediately enter down the additions and places of abode of ſuch perſon or perſons ſo fined, and return the ſame in their eſtreats; and that the Solicitor for the caſual revenue do cauſe this order to be ſerved on the ſeveral clerks of the Crown and peace of the kingdom or their deputies.

CHAP. XIV.

OF THE PROCESS WHICH ISSUES TO THE SEVERAL SHERIFFS CALLED THE PROCESS OF GREEN WAX.

THE method of iſſuing this proceſs out of the ſummoniſter's office, the pipe office, and treaſurer's remembrancer's office, all which are uſually called the green wax proceſs, is as follows, viz.

Summoniſter's proceſs.

The clerk of the eſtreats and ſummoniſter iſſues in proceſs twice every year, viz. in Trinity and Hillary vacations, all fines and amerciaments, forfeited recognizances, &c. which are eſtreated and returned into the office from the courts of King's bench and Common pleas, and from the ſeveral clerks of the Crown and peace, which firſt proceſs (ſometimes particularly called the green wax proceſs) is againſt the goods only, and is returned by the ſheriffs yearly,

Digitized by Google

yearly, when they come on their accounts; and, after they have compared with the ſummoniſter, they bring them to the tranſcriptor and foreign appoſer, who thereon appoſes the ſheriffs in court on their accounts.

Proceſs of the pipe.

And the foreign appoſer makes out a tranſcript in parchment of all the ſums for which the ſheriffs do not * *tot*, which are called ‖ *nils*, which he ſends down to the clerk of the pipe, and ſends a tranſcript or copy thereof to the comptroller of the pipe, who, in the vacation of the iſſuable term after the appoſal of the ſheriff, ſends them in proceſs under the ſeal of the Exchequer to the ſeveral ſheriffs; which proceſs is called the § ſummons of the pipe, and is againſt body, goods, and lands; and upon the ſheriffs accounts he appoſes the ſheriff in court thereon.

Second proceſs of the pipe.

And ſuch ſums as the ſheriffs are not thereon charged with, which are called *nils*, as aforeſaid, if they are not reduced or diſcharged by order, the clerk of the pipe tranſcribes out of the great roll into what is called a paper book and ſends them to the comptroller of the pipe,

* *Tot*, i. e. *Totum in manibus.* ‖ *Nils*, or *nihils*: i. e. *nihil in manibus.*

§ Lord Chief Baron Gilbert, in his Treatiſe of the Exchequer, page 133, ſays that the proceſs of the pipe is certainly an unneceſſary proceſs, and ſpends a great deal of time to no purpoſe; ſince theſe ſums have been already in charge by the firſt proceſs, and coming out of that office *nihill'd*, that would have been ſufficient authority for the clerk of the pipe to tranſmit them *in ſchedula pipæ*; for *magna chartæ* is ſatisfied, ſince it appears on the ſaid firſt proceſs that they had no goods or chattels; and therefore to iſſue the ſummons of the pipe is unneceſſary. But however that may be the caſe in England, it ſeems not to hold here; for the proceſs of the pipe there is againſt goods and chattels only, and in the nature of a *fieri facias*; whereas in this kingdom it is againſt goods, chattels, body, and lands: ſo that in fact it is the ſubſequent proceſs, viz. the ſecond remembrancer's, that ſeems unneceſſary; at leaſt where the debtor himſelf is living.

Digitized by Google

who, in the Trinity vacation next following, again iſſues them in in § proceſs to the ſheriff.

Second remembrancer's proceſs.

And what are *nil'd* in this proceſs the clerk of the pipe alſo makes a ſchedule of, which is called the ſchedule of the pipe, and ſends it once a year to the treaſurer's remembrancer, who, every Trinity vacation, iſſues the ſame in proceſs, which is called the ‡ treaſurer's remembrancer's proceſs, and is againſt body, goods, lands, heirs, executors, and adminiſtrators. And what ſums the ſheriff *tots* for upon this proceſs are by the ſecond remembrancer certified to the Auditor general, who draws a tranſcript thereof, which is called the ſheriff's * foreign account, and ſends it to the pipe for the purpoſe of making out the *debets*.

Which uſed to be continued.

And what was not totted for by the ſheriff in this laſt proceſs uſed to be renewed and continued to be iſſued in proceſs by the treaſurer's remembrancer until the debts

§ This ſecond proceſs of the pipe ſeems to be a moſt unneceſſary, ſuperfluous proceſs, and is directly in oppoſition to the rules of 25th November, 1685, and of 28th November, 1709.

‡ This is alſo called the long writ or prerogative writ, and is not iſſued till a *nihil* is returned upon the ſummons of the pipe; which was ſettled to be a part of the liberty of the ſubject by *magna charta c.* 8. *nos vero vel ballivi noſtri non ſeiſiemus terram aliquam vel redditum pro debito aliquo, quamdiu catalla debitoris præſentia ſufficiunt ad debitum reddendum, et debitor ipſe paratus ſit inde ſatisfacere.* Gilb. Treat. of Exch. 123. And yet as the ſheriff is bound to hold an inquiſition on this writ, whether the debtor had any goods and chattels, before he extend the lands, or take the body of the debtor, it ſhould ſeem as if this writ might be uſed in the firſt inſtance without any violation of *magna charta*; and thereby the perſons againſt whom theſe proceſs iſſue prevented from making fraudulent ſales or removing themſelves and their goods into other counties.

* So called becauſe it is made up from matters not in the pipe, ſuch as the chief remembrancer's *conſtat* of 15 ſh. for fines for *profers*, the foreign appoſer's *conſtat*, and the ſheriff's certificate of waiſs and eſtrays, *&c.*

were

Digitized by Google

were paid or discharged by pardon or by reducement, (which may be at any time before the money is actually paid into the treasury;) or until he was otherwise directed by the court. But this having been attended with great expense to the crown, a rule was made the 28th of November, 1709. (which see hereafter) that this process should issue but once unless by particular order.

And note that all these process and transcripts are issued by the respective officers *ex officio*, without any fee or fees being ever paid by the Crown to any of them for making out or issuing the same, other than the ancient fees due to them on their patents or the establishment, and allowed by the Crown; to wit, to the clerk of the pipe 55l. annually, to the comptroller of the pipe 7l. to the second remembrancer 7l. 15s. 6d. and to the foreign apposer 15l.

These several process issued *ex officio*.

Hence it plainly appears that upon the first process of the green wax the sheriff must either *tot* or *nil* according as the case is and cannot § *o'ni*; for the whole account must appear upon the pipe roll that the clerk of the pipe may issue *debets* for the payment of the sums so *totted* for into the treasury; unless they be before discharged by order of the Exchequer. Besides, many of the sums in this process being small and paid upon the first demand, they were part of an annual charge in the same manner as the other annual revenue of the King was. Nor can he *o'ni* on the second remembrancer's process as the process ends there; and as all that is possible has been done to get them in by holding an inquiry upon the prerogative writ. But he may *o'ni* in the comptroller of the pipe's process as this is a transcript or duplicate of the pipe process.

Sheriff cannot *o'ni* on the first process or on the second remembrancer's process.

§ *O'ni*, i. e. *Oneretur nisi habeat sufficientem exonerationem.*

Digitized by Google

Sums *o'ni'd* for continued in charge againſt the ſheriff.

And the ſums ſo *o'ni'd* for therein are continued in charge againſt the ſheriff until he clears his accounts; which if he neglects to do, fines are impoſed on him in manner as is hereafter mentioned. But a *tot* in the ſecond remembrancer's proceſs, as well as in the ſummoniſter's proceſs, for any fine that is reducible, is conſidered as an *o'ni.*

Rule 25th November, 1685.

Ordered for the future that none of the officers of this court do iſſue proceſs but once; and after that draw them down to the ſecond remembrancer, to the end the prerogative writ may iſſue where the ſheriffs on their appoſal return neither body, goods, or lands.

Rule 22d February, 1686.

Memorandum, it is this day ordered that the proceſs to be iſſued for the King be made returnable the third return of Trinity term; the court conſidering the inconveniency which attended the reſpective ſheriffs returning a *Tardè*; and to prevent their having any pretence that the proceſs came late to their hands.

Rule 24th February, 1695.

The court this day taking notice that the ſeveral ſheriffs of this kingdom do from time to time make very ill and inſufficient returns on the proceſs of the pipe, do hereby order that every ſheriff of this kingdom ſhall for the future call a jury for their better information on their ſaid proceſs of the pipe; and that the comptroller of the pipe do for the future inſert a memorandum at the bottom of their proceſs, requiring each ſheriff of the kingdom to be informed as aforeſaid.

Rule 28th November, 1709.

Mr. Solicitor general on behalf of her Majeſty informs the court, that the proceſs of green wax iſſuing firſt againſt the

Digitized by Google

the goods from the ſummoniſter's office, and on the *nils* returned by the reſpective ſheriffs on that proceſs, the ſeveral ſums charged in that proceſs and ſo *nill'd*, are by the ſummoniſter transferred to the pipe, and from the pipe are iſſued in proceſs againſt body, goods, and lands; and all the reſpective charges which on that proceſs are *nill'd* by the reſpective ſheriffs on their accounts are therein drawn down to the ſecond remembrancer's office, and that thereon the ſecond remembrancer iſſues forth proceſs againſt bodies, goods, lands, heirs, executors and adminiſtrators of the reſpective perſons, for the reſpective charges ſo drawn down from the pipe office to the ſecond remembrancer's office; from whence the proceſs iſſues for ſeveral years, though the reſpective ſheriffs, both by the inquiſition held and returned on that proceſs and likewiſe on their account, on their oaths, do return that there are not ſuch perſons, goods, lands, heirs, executors or adminiſtrators to be found in their reſpective bailiwicks; and that proceſs continuing to iſſue becomes very voluminous and chargeable to her Majeſty whereas really her Majeſty derives no advantage thereby; and therefore on behalf of her Majeſty prays that for the future proceſs ſhall not iſſue more than once out of any office againſt goods, bodies, lands, heirs, executors or adminiſtrators of any of the perſons charged in the ſaid reſpective proceſs; and that on the return of the reſpective ſheriffs on the proceſs out of the ſecond remembrancer's office, an exannual roll may be made up to lie by, and not be iſſued in proceſs, but by particular order of the court, againſt any of the perſons, their heirs, executors or adminiſtrators; and that commiſſions do iſſue, when the court ſhall think fit, to commiſſioners to be appointed by the court on ſaid exannual roll,

to

Digitized by Google

to inquire and find out what may be had or levied thereon; court ordered accordingly *.

Rule 14th May, 1717. All ſheriffs ſhall hold inquiries on the ſecond remembrancer's proceſs in every barony in their reſpective counties at their peril.

All proceſſes for fines eſtreated to be delivered to the purſuivant and by him to the ſheriffs. The ſeveral proceſſes that iſſue for all fines eſtreated, both foreign fines and fines impoſed by the court of Exchequer, are to be delivered to the purſuivant, who is to deliver them to the ſeveral ſheriffs of the kingdom.

And the time and manner of delivering theſe proceſſes we find ſettled by the following rule:

Rule 4th February, 1709. The court being informed by Mr. Attorney General Forſter of the great delays in delivering the ſeveral proceſſes of green wax iſſuing out of the court to the ſeveral ſheriffs of this kingdom, which is of great coſt and prejudice to her Majeſty; the ſaid ſheriffs not having ſufficient time to execute the ſame; It is ordered, that all ſuch proceſſes be delivered to the purſuivant, in three weeks after the end of every iſſuable term, by the ſeveral officers of this court iſſuing the ſame; and that the purſuivant do deliver them to the ſeveral ſheriffs of this kingdom in three weeks after the delivery of them to him.

* Notwithſtanding the above rule, yet where a ſheriff neglects to account, in order that proceſs may not be wanting in the ſeveral departments ſeveral names and ſums are taken by the ſecond remembrancer out of the paper book for the year before, for the comptroller of the pipe's proceſs, and tuo of the roll before the paper book which is called by ſome the exannual roll for the ſecond remembrancer's office.

And

Digitized by Google

And theſe fines, &c. uncollected are, as has been before ſaid, continued in the great roll, and iſſued yearly to the ſheriffs in proceſs, until ſuch time as the court of Exchequer ſhall think fit to ſtrike them out of the annual charge and place them in the exannual rolls as deſperate debts; but before that is done, a commiſſion ought to iſſue, directed to diſcreet men, to inquire and return on their oaths whether any thing is to be gotten of theſe debts. But however it is generally practiſed otherwiſe; for when theſe fines, &c. have been in all the proceſs in the manner before mentioned, ſo that there appears no likelihood of getting any thing, the clerk of his own accord leaves them out, but lays them up carefully in his office as deſperate debts; yet they may at any time afterwards be renewed, and again iſſued in charge.

Fines uncollected continued in the great roll, and iſſued yearly in proceſs.

CHAP. XV.

Of PROFITS of the HANAPER, POST FINES, CUSTODIAM RENTS, FIRST FRUITS, PROFITS upon FACULTIES, and TWENTIETH PARTS.

PROFITS of the HANAPER *. This is a duty ariſing to the Crown for ſealing patents, and for original writs, viz. for all patents or grants of lands or offices, £1 8s. 3d. †,

Profits of the hanaper what.

* So called from the hamper or baſket, in which original writs relating to the buſineſs of the ſubject, and the returns of them, were according to the ſimplicity of ancient times kept, as were others, relating to ſuch matters wherein the Crown is immediately or mediately concerned, in a little ſack or bag, in *parva baga*; from whence has ariſen the diſtinction of the hanaper office, and petty bag office, which both belong to the common law court in chancery. 3 Black. 49.

† Of this £1 8s. 3d. the King hath 15s. (unleſs it be for patents of offices; in which caſe he hath but 1s. 6d.) the chancellor 2s. for a docquet; the maſter of the rolls 5s. the clerk of the hanaper 6s. 3d.

and

Digitized by Google

and for original writs, differently according to the nature of the writ. But the § moiety of these is granted to the Lord Chancellor for the ſupport of the dignity of his office.

How accounted for.

The clerk of the hanaper paſſes his accounts before the commiſſioners of the impreſt accounts; before whom the books of entries of patents and writs ſealed are produced, which are a charge on him for all money received by him; and he likewiſe ſwears to the truth of the charge. His diſcharges are the receipt of the Lord Chancellor for his moiety, and his warrants for diſburſements for the uſe of the Chancery court, which the Chancellor has a power to make for all or any part of this fund, and Exchequer acquittances for payments into the treaſury. And his account is to be ſigned by the Lord Chancellor yearly.

Poſt fines.

POST FINES are, as has been mentioned in chap. 13, a duty to the King for a fine acknowledged in the court of Common pleas, to be paid by the cognizee, after the fine is fully paſſed; being ſo much and half ſo much as was paid to the King for the *præ-fine*; and they are eſtreated

§ The firſt grant of this moiety that I can find was by letters Patents dated 5th of May 1 James I. to Adam Lord Viſcount Loſtus of Ely, then Lord Chancellor of Ireland, for the ſupport of the dignity of his office, during his continuence therein; and is expreſſed to be of one full moiety of all the fines payable to the Crown on original writs, as alſo of all the profits and emoluments ariſing therefrom; which grant was confirmed to the ſame chancellor by further letters patents, dated the 5th of May, in the firſt year of the reign of King Charles I. but I do not find that this moiety has been expreſsly granted in any of the patents to ſubſequent chancellors, altho' it has been conſtantly paid to them, unleſs it comes under the general words which have been in all the ſaid ſubſequent grants; to wit, to have, hold, enjoy, poſſeſs, and exerciſe the ſaid office, together with all and ſingular the powers, authorities, juriſdictions, immunities, privileges, penſions, fees, ſalaries, allowances, benefits of the the ſeal, and finable writs, and all other benefits, commodities, emoluments, and advantages whatſoever, to the ſaid office belonging, incident or in any manner appertaining, or with the ſaid office, at any time heretofore had, held, or enjoyed.

by

Digitized by Google

by the court of Common pleas into the Exchequer, and levied by the ſheriff of the county off of the lands of which the fine was paſſed, and anſwered by him in his account.

CUSTODIAM RENTS. Theſe are ſuch rents as are reſerved to the Crown on *cuſtodiams*, or leaſes under the Exchequer ſeal; which are moſt commonly made of ſuch lands, *&c.* as are ſeized into the hands of the Crown upon outlawries in civil actions, whereon, upon motion of the plaintiff in the action to the court of Exchequer, the *cuſtodiam* is given to him towards the ſatisfaction of his debt, and a ſmall rent is likewiſe reſerved to the Crown. Cuſtodiam rents on outlawries in civil actions.

And ſuch *cuſtodiams* are alſo granted by the court of Exchequer for debts due to the Crown; and upon ſeizures for rents reſerved on grants from the Crown of lands, rectories, tithes, *&c.* And in theſe caſes either the ſolicitor for the King's rents, or the collector of the diſtrict, is generally the cuſtodee. For the ſecuring the payment of theſe *cuſtodiam* rents the cuſtodee gives ſecurity by recognizance before the Chief Baron of the Exchequer, who ſigns the *cuſtodiam*, which is the warrant for its paſſing under the Exchequer ſeal. Or for debts due to the Crown.

Theſe rents are all in charge in the pipe, and from thence proceſs iſſues to the reſpective ſheriffs for collecting them as he does other ſums, on which proceſs the ſheriff is appoſed at the paſſing of his accounts, and anſwers for, and pays them together with the money collected by him on the proceſs of the green wax. In charge in the pipe.

For more of this matter ſee chap. CUSTODIAMS.

Digitized by Google

FIRST FRUITS and TWENTIETH PARTS were alſo branches of the caſual revenue; but they are not ſo at this day. However it may not be amiſs to mention ſhortly from whence they aroſe, and when and how they were diſpoſed of.

Profits upon faculties.

PROFITS UPON FACULTIES. Theſe are ancient profits ariſing to the Crown, being a part or portion of taxes upon the granting of faculties or diſpenſations, according to the allottment thereof by the ſtatute of 28 Hen. VIII. c. 19. revived by ſtat. 2 Eliz. c. 1. to be received and accounted for by the clerk of the faculties; for according to the ſaid act the King is to have ⅓ of ⅓ which amounts to £3, and the remaining parts are to be divided among the ſeveral officers in the ſaid act mentioned.

How diſpoſed of.

Of this £3 one moiety was granted by letters patent, dated 10th of April, 20 James I. to Chriſtopher then archbiſhop of Armagh and his ſucceſſors in that ſee; ſo that there remained but £1 10s. to be accounted for to the Crown. And by letters patent, dated 27th of March 1727, 1 Geo. II. one fourth of the money payable for taxes of faculties, rated at and above £4, and which, according to the computation aforeſaid, and in the ſaid act, is the ſum remaining to the Crown, was granted to doctor Marmaduke Coghill, then judge of the prerogative and faculties, in conſideration of his great diligence and trouble in executing the ſaid office, and in regard the ſame was an office of great dignity and conſequence, and required conſtant attendance, and that no ſallary was annexed thereto; to hold to the ſaid Marmaduke Coghill, during ſuch time as he ſhould continue in the ſaid office of

Digitized by Google

of judge or commiſſary of the courts of prerogative and faculties; under the colour of which grant (for none other appears) the ſaid fourth part has been ever ſince received by the regiſters or commiſſaries, ſucceſſors in the ſaid office, and no part of it accounted for or paid to the Crown.

Firſt fruits what.

THE FIRST FRUITS, *primitiæ* or *annates*, are a charge upon admiſſion into church livings; being the firſt year's profit of every eccleſiaſtical benefice or promotion in this kingdom. And they are payable in two years by four gales; for which bonds are taken to the Crown by an officer called the remembrancer, clerk and receiver of the firſt fruits; who receives thoſe dues and formerly paid them into the treaſury; but if default be made in the payment of them to this officer, proceſs iſſues for the levying them as other bonds to the Crown.

Twentieth parts what.

THE TWENTIETH PARTS were alſo a charge upon all church livings; being the twentieth part of every year's profit of every eccleſiaſtical benefice or promotion.

Originally papal uſurpations, and transferred to the King as head of the church.

And theſe profits of the firſt fruits and twentieth parts were originally a part of the papal uſurpations over the clergy in this kingdom. And when that power was aboliſhed, and the King declared the head of the church, they were annexed to the Crown by the ſtat. 26 Hen. VIII. Eng. which is in force here by the 28 Hen. VIII. c. 8. and a valuation was made of them by commiſſion grounded on this act, which was entered in what was called the King's book, which was formerly lodged in the chief remembrancer's office in the Exchequer, but now this and all the records belonging to them are in the office of the clerk or remembrancer of them.

Digitized by Google

But no part of the revenue of the Crown now.

But neither of theſe are at this day any part of the revenue of the Crown; her Majeſty Queen Anne having by patent, dated the 7th of February in the tenth year of her reign, releaſed to the biſhops and clergy and their ſucceſſors the ſaid twentieth parts; and having by another patent, of the ſame date, granted to the ſeveral perſons therein named and their ſucceſſors all the firſt fruits (which are therein ſaid to amount to about £450 a year) in truſt for the building and repairing of churches, and purchaſing of glebes, where they ſhall be wanting, and of impropriations, where the benefice ſhall not ſuffice; and for the more liberal maintainance of the miniſter who has the cure of ſouls. And theſe patents were by the ſtat. of 2 Geo. I. c. 15. confirmed; and ſince the patent and act of parliament, the firſt fruits are paid by the clerk or receiver of them to the truſtees.

CHAP.

Digitized by Google

CHAP. XVI.

OF WAIFS, ESTRAYS, GOODS OF FUGITIVES AND FELONS, DEODANDS, WRECKS, TREASURE-TROVE, AND GOLD AND SILVER-MINES.

Waifs.
1 Black. c. 8.
5 Co. 109.

WAIFS, *bona waviata*, are goods ſtolen and waived or thrown away by a thief in his flight for fear of being apprehended. Theſe are given to the King by law as a puniſhment upon the owner for not himſelf purſuing the felon and taking away his goods from him. But waived goods do not belong to the King till ſeized by ſomebody for his uſe; for if the party robbed can ſeize them firſt, though at the diſtance of twenty years, the King ſhall not have them. And if the goods are hid by the thief, or left any where by him, ſo as that he had not them about him when he fled, and therefore did not throw them away in his flight, thoſe are not waived goods, and the owner may have them again when he pleaſes.

Eſtrays.
1 Black. c. 8.

ESTRAYS are ſuch valuable animals as are found wandering in any manor or lordſhip, and of which no man knows the owner; in which caſe the law gives them to the King or his grantee as derelict goods. But in order to veſt an abſolute property in the King or his grantees they muſt be proclaimed in the church and two market towns next adjoining to the place where they are found; and then if no man claims them after proclamation and a year and a day paſſed, they belong to the King or his grantee without redemption. If the owner claims them within the year and day, he muſt pay the charges of finding, keeping, and proclaiming them.

GOODS

Goods of fugitives. Foſter 272.

GOODS of FUGITIVES are the goods of a perſon who is found upon record to have fled for felony, whether he be found guilty of the felony or not, which are forfeited to the King as a puniſhment for his having done what in him lay to ſtop the courſe of publick juſtice. But the jury very ſeldom find the flight; the forfeiture being looked upon, ſince the very great encreaſe of perſonal property of late years, as too great a penalty for an offence to which a man is prompted by a natural love of liberty.

Goods of felons.

GOODS of FELONS are the goods of perſons convicted of felony or treaſon, or put in the exigent, for which ſee chap. 17.

Not to be ſeiſed until conviction. 1 Hale 365.

By the ſtat. of 1 Rich. III. c. 3. Eng. it is enacted that neither ſheriff, *&c.* or any other perſon ſhall take or ſeize the goods of any perſon arreſted or impriſoned before he be convicted of the felony, (under which term Sir M. Hale is of opinion treaſon is comprehended, but qu.) or before the goods be otherwiſe lawfully forfeited, upon pain of forfeiting the double value of the goods ſo taken.

Except where a ſecond *capias* is awarded. 1 Hale 365.

But by the ſtat. of 25 Edw. III. c. 14. Eng. which is not repealed by the laſt mentioned act, where a perſon is indicted of felony, (under which Sir M. Hale ſays treaſon is comprehended) in the ſecond *capias* there ſhall be compriſed a precept to the ſheriff to ſeize his goods and keep them till the day of return of the writ; and if he be not found then the exigent is to be awarded and the goods forfeited.

James

Digitized by Google

Writ of seizure awarded upon a parliamentary attainder in Great Britain.

James late duke of Ormond being attainted of high treaſon by an act of parliament in Great Britain, a queſtion aroſe in the Exchequer here, whether a writ of ſeizure could regularly iſſue to ſeize his perſonal eſtate, until an inquiſition was taken and returned. And Lord Chief Baron Gilbert declared that when a writ of ſeizure iſſues it is only to remind the ſheriff of his duty; for from the inſtant of a perſon's attainder his goods are forfeited to the Crown, and the ſheriff *virtute officii* may ſeize them; and that by the Duke's attainder in Great Britain he was attainted through all the King's dominions; and therefore a writ of ſeizure was awarded with a clauſe of inquiry. 29th of February, 1715.

Court of K. B. cannot grant a writ of *venditioni exponas* to ſell goods of an outlaw.

A perſon having been outlawed for treaſon, a ſpecial writ of *capias ut lagatum* iſſued out of the King's bench againſt him; and the ſheriffs having thereupon returned that he was poſſeſſed of a cutter lying at one of the quays in Dublin, which they ſeized for his Majeſty's uſe; an application was made to the court for a *venditioni exponas* for the ſale of the cutter; but the court held that they could not grant ſuch writ, nor do any act for diſpoſing of the veſſel, it having become part of his Majeſty's property, over which the court of Exchequer only had juriſdiction. It thereupon became a queſtion in what manner the proceedings ſhould be removed into the Exchequer; whether by eſtreat, or by *certiorari* from the court of Chancery to remove the proceedings into that court, thence to be ſent by *mittimus* into the Exchequer. And the court held that it might be either way; but that as the former method was the more expeditious and leſs expenſive, it was therefore the more eligible. And the outlawry was accordingly eſtreated. The King againſt Connor in the K. B. 1771.

And

Digitized by Google

And afterwards upon motion in the Exchequer upon the ſaid eſtreat, by the ſolicitor of the caſual revenue, a writ of *venditioni exponas* was awarded.

Deodands. 1 Black. c. 8. 1 Hale 419.

DEODANDS. By theſe are meant any moveable goods which are the immediate occaſion of the death of any human creature, which are forfeited to the King to be applied to pious uſes and diſtributed in alms by his high almoner; though formerly deſtined to more ſuperſtitious purpoſes. They ſeem to have been originally deſigned in the blind days of popery as an expiation for the ſouls of ſuch as were ſnatched away by ſudden death; and for that purpoſe ought properly to have been given to holy church, in the ſame manner as the apparel of a ſtranger who was found dead was applied to purchaſe maſſes for the good of his ſoul.

Not forfeited till the death be found. 1 Hale 419.

But they are not forfeited till the death be found, which is regularly by the coroner; but may before the commiſſioners of gaol-delivery, oyer and terminer, or of the peace, if omitted by the coroner. And the inquiſition ought to inquire of the goods that occaſioned the death, and the value of them; and the *villata* where the miſchance happened ſhall be charged with proceſs for the goods or their value, though they were not delivered to them.

Cannot be inquired of by the grand jury at an aſſize ſecretly. 4 Burr. 19.

But where a man was killed by a fall from a horſe, and the coroner having not taken any inquiſition upon the death, the lord of the manor finding himſelf likely to loſe his deodand made his application at the aſſizes, where the jury found an inquiſition or preſentment of the fact; the court of King's bench in Weſtminſter-hall quaſhed the preſentment, as being a preſentment of entitling tranſacted in

Digitized by Google

in ſecret, and which the grand jury had no authority to make, at leaſt under their general charge from the judge.

A forfeiture not favoured in courts of law. Foſt. 266. 4 Burr. 17.

And as this forfeiture ſeems to have been originally founded rather in the ſuperſtition of an age of extreme ignorance than in the principles of ſound reaſon and true policy, it hath not of late years met with great countenance in Weſtminſter-hall; and when juries have taken upon them to uſe a judgment of diſcretion, not ſtrictly within their province, for reducing the quantum of the forfeiture, the court of King's bench has refuſed to interpoſe in favour of the Crown or lord of the franchiſe.

Wrecks, the progreſs of the law with regard to them. 1 Black. c. 8.

WRECK. This, by the ancient common law, was where any ſhip was loſt at ſea and the goods or cargo were thrown upon the land; in which caſe theſe goods ſo wrecked were adjudged to belong to the King; for it was held that by the loſs of the ſhip all property was gone out of the original owner. But this was undoubtedly adding ſorrow to ſorrow, and was conſonant neither to reaſon nor humanity. Wherefore it was firſt ordained by King Henry I. that if any perſon eſcaped alive out of the ſhip it ſhould be no wreck. And afterwards King Henry II. by his charter declared that if either on the coaſts of England, Poictou, Oleron, or Gaſcony, any ſhip ſhould be diſtreſſed, and either man or beaſt ſhould eſcape or be found therein alive, the goods ſhould remain to the owners, if they claimed them within three months; but otherwiſe ſhould be eſteemed a wreck, and ſhould belong to the King or other lord of the franchiſe. This was again confirmed with improvements by King Richard I. who in the ſecond year of his reign not only eſtabliſhed theſe conceſſions by ordaining that the owner, if he was ſhipwrecked and eſcaped, "*omnes res ſuas liberas et quietas haberet*;" but

Digitized by Google

alſo, that if he periſhed, his children, or in default of them his brethern and ſiſters, ſhould retain the property; and that, in default of brother and ſiſter, the goods ſhould remain to the King. And the laws ſo long after as the reign of Henry III. ſeems ſtill to have been guided by the ſame equitable proviſions; for then if a dog (for inſtance) eſcaped, by which the owner might be diſcovered, or if any certain mark were ſet on the goods, by which they might be known again, it was held to be no wreck. And this is certainly moſt agreeable to reaſon; the rational claim of the King being only founded upon this, that the true owner cannot be aſcertained.

The preſent legal notion of them.

But afterwards, in the ſtatute of Weſtminiſter the firſt, the law is laid down more agreeable to the charter of King Henry II. and upon that ſtatute hath ſtood the legal doctrine of wrecks to the preſent time. It enacts that if any living thing eſcape, a man, a cat, or a dog; (which, as in Bracton, are only put for examples) in this caſe, and as it ſeems in this caſe only, it is clearly not a legal wreck; but the ſheriff of the county is bound to keep the goods a year and a day, that if any man can prove a property in them, either in his own right or by right of repreſentation, they ſhall be reſtored to him without delay; but if no ſuch property be proved within that time, they then ſhall be the King's. If the goods are of a periſhable nature, the ſheriff may ſell them, and the money ſhall be liable in their ſtead.

Often granted away by the Crown.

This revenue of wrecks is frequently granted out to lords of manors as a royal franchiſe; and if any one be thus entitled to wrecks in his own land, and the King's goods are wrecked thereon, the King may claim them at any time, even after the year and day.

It

Digitized by Google

It is to be obſerved that, in order to conſtitute a legal wreck, the goods muſt come to land. If they continue at ſea, the law diſtinguſhes them by the barbarous appellations of *jetſam*, *flotſam*, and *ligan*. *Jetſam* is where goods are caſt into the ſea and there ſink and remain under water. *Flotſam* is where they continue ſwimming on the ſurface of the waves. *Ligan* is where they are ſunk in the ſea but tied to a cork or buoy in order to be found again. Theſe are alſo the King's if no owner appears to claim them; but if any owner appears, he is entitled to recover the poſſeſſion. For even if they be caſt over board without any mark or buoy, in order to lighten the ſhip, the owner is not by this act of neceſſity conſtrued to have renounced his property; much leſs can things *Ligan* be ſuppoſed to be abandoned, ſince the owner has done all in his power to aſſert and retain his property. Theſe three are of admiralty juriſdiction, and accounted ſo far a diſtinct thing from the former, that by the King's grant to a man of wrecks, things *jetſam flotſam and ligan* will not paſs.

Jetſam flotſam and *ligan*.

Of admiralty juriſdiction.

Wrecks, in their legal acceptation, are at preſent not very frequent; it rarely happening that every living creature on board periſhes; and if any ſhould ſurvive, it is a very great chance, ſince the improvement of commerce, navigation, and correſpondence, but the owner will be able to aſſert his property within the year and a day limited by law.

Wrecks not frequent.

And in order to preſerve this property entire for him, and if poſſible to prevent wrecks at all, our laws have made many very humane regulations; in ſpirit quite oppoſite to thoſe ſavage laws which formerly prevailed

By means of ſalvage.

Digitized by Google

in all the northern regions of Europe, permitting the inhabitants to ſeize on whatever they could get as lawful prize. For by the ſtatute of 2 Ed. III. c. 13. if any ſhip be loſt on the ſhore, and the goods come to land, (ſo as it be not legal wreck) they ſhall be preſently delivered to the merchants, they paying only a reaſonable reward to thoſe that ſaved and preſerved them, which is called ſalvage. And by the 4 Geo. I. c. 4. and 17 Geo. II. c. 11. further ſalutary regulations are made for the encouragement of the aſſiſtance and ſalvage of ſhips ſtranded or in diſtreſs.

Treaſure trove 1 1 Black. c. 8.

TREASURE TROVE is money, or coin, gold, ſilver, plate, or bullion, found hidden in the earth, or other private place, the owner thereof being unknown; in which caſe ſuch treaſure belongs to the King; but if he that hid it be known, or afterwards found out, the owner and not the King is entitled to it. Alſo if it be found upon the earth, or in the ſea, it doth not belong to the King, but to the finder if no owner appears; ſo that it ſeems it is the hiding, not the abandoning of it, that gives the King a property; and this diſtinction clearly appears from the different intentions which the law implies in the owner. A man who hides his treaſure in a ſecret place evidently does not mean to relinquiſh his property; but reſerves a right of claiming it again when he ſees occaſion; and if he dies and the ſecret dies with him, the law gives it to the King as part of his royal revenue. But a man who ſcatters his treaſure upon the publick ſurface of the earth, or into the ſea, is conſtrued to have abſolutely abandoned his property, and returned it into the common ſtock, without any intention of reclaiming it; and therefore it belongs, as in a ſtate of nature, to the firſt occupant or finder; unleſs the owner appears and aſſerts his right, which then proves

Digitized by Google

proves that the loſs was by accident, and not with an intent to renounce his property.

Gold and Silver Mines are another branch of the royal revenue, which has its original from the King's perogative of coinage, in order to ſupply him with materials. By the old common law, if gold or ſilver be found in mines of baſe metal, according to the opinion of ſome, the whole was a royal mine, and belonged to the King. But now by the ſtatute of 4 Anne c. 12. no mines of copper, tin, iron, or lead, ſhall be adjudged to be a royal mine, altho gold or ſilver may be extracted thereout. And all perſons that ſhall be proprietors of any mines wherein any ore ſhall be diſcovered, and in which there is copper, tin, iron, or lead, ſhall hold and enjoy the ſame; but the King is to have the ore at certain prices in the act ſtated.

Gold and ſilver mines. 1 Black. c. 8.

CHAP.

Digitized by Google

CHAP. XVII.

OF ESCHEATS AND FORFEITURES.

Eſcheats what. 2 Blackſ. c. 15.

ESCHEAT is one of the fruits and conſequences of feodal tenure, being the determination of the tenure, or diſſolution of the mutual ties between the lord and tenant, from the extinction of the blood of the latter, by either natural or civil means. If he die without heirs of his blood, or if his blood be corrupted and ſtained by commiſſion of treaſon or felony, whereby every inheritable quality is entirely blotted out and aboliſhed; in ſuch caſes the land eſcheats or falls back to the lord of the fee, that is the tenure is determined by breach of the original condition expreſſed or implied in the feodal donation. In the one caſe there are no heirs ſubſiſting of the blood of the firſt feodatory or purchaſer, to which heirs alone the grant of the feud extended; in the other, the tenant by perpetrating an atrocious crime ſhows that he is no longer to be truſted as a vaſſal, having forgotten his duty as a ſubject; and therefore forfeited his feud, which he held under the implied condition that he ſhould not be a traitor or a felon; the conſequence of which in both caſes is, that the gift being determined reſults back to the lord who gave it.

Of two ſorts, ibid.

ESCHEATS are frequently divided into theſe *propter defectum ſanguinis*, and thoſe *propter delictum tenentis*; the one ſort, if the tenant dies without heirs; the other, if his blood be attainted. But both theſe ſpecies may well be compre-

Digitized by Google

comprehended under the firſt denomination only, for he that is attainted ſuffers an extinction of his blood as well as he that dies without relations. The inheritable quality is expunged in one inſtance and expires in the other; or as the doctrine of eſcheats is very fully expreſſed in Fleta "*Dominus feodi loco hæredis habetur, quoties* "*per defectum vel delictum extinguitur ſanguis tenentis.*"

Thro' deficiency of blood, ibid.

ESCHEATS ariſing merely upon deficiency of the blood, whereby the deſcent is impeded, are firſt, when the tenant dies without any relations on the part of any of his anceſtors; ſecondly, when he dies without any relations on the part of thoſe anceſtors from whom his eſtate deſcended; thirdly when he dies without any relations of the whole blood. In two of theſe caſes, the blood of the firſt purchaſer is certainly, in the other it is probably, at an end; and therefore in all of them the law directs that the land ſhall eſcheat to the lord of the fee. For the lord would be manifeſtly prejudiced, if, contrary to the inherent condition tacitly annexed to all feuds, any perſon ſhould be ſuffered to ſucceed to lands, who is not of the blood of the firſt feudatory, to whom for his perſonal merit the eſtate is ſuppoſed to have been granted.

Or by corruption of blood, ibid.

By attainder for treaſon or felony the blood of the perſon attainted is ſo corrupted as to be rendered no longer inheritable.

This to be diſtinguiſhed from forfeiture. ibid.

But this ſpecies of eſcheat muſt be diſtinguiſhed from forfeiture of lands to the King; which, by reaſon of their ſimilitude in ſome circumſtances, and becauſe the Crown is very frequently the immediate lord of the fee, and therefore entitled to both, have been often confound-

ed

Digitized by Google

ed together. Forfeiture of lands and of whatever elſe the offender poſſeſſed was the doctrine of the old Saxon law, as a part of the puniſhment for the offence, and does not at all relate to the feodal ſyſtem, nor is the conſequence of any ſigniory or lordſhip paramount; but, being a prerogative veſted in the Crown, was neither ſuperſeded nor diminiſhed by the introduction of the Norman tenures; a fruit and conſequence of which eſcheat muſt undoubtedly be reckoned. Eſcheat therefore operates in ſubordination to this more ancient and ſuperior law of forfeiture.

How it is occaſioned, ibid.

The doctrine of eſcheat upon attainder, taken ſingly, is this; that the blood of the tenant by the commiſſion of any felony (under which denomination all treaſons were formerly comprized) is corrupted and ſtained, and the original donation of the feud is thereby determined; it being always granted to the vaſſal on the implied condition of *dum bene ſe geſſerit*; upon the thorough demonſtration of which guilt by legal attainder, the feodal covenant and mutual bond of fealty are held to be broken; the eſtate inſtantly falls back from the offender to the lord of the fee; and the inheritable quality of the blood is extinguiſhed and blotted out for ever.

And operates as to eſtates veſted, ibid.

In this caſe the law of feodal eſcheats was brought to England at the conqueſt, and in general ſuperadded to the ancient law and forfeiture; in conſequence of which corruption and extinction of hereditary blood the land of all felons would immediately reveſt in the lord, but that the ſuperior law of forfeiture intervenes, and intercepts it in its paſſage; in caſe of treaſon for ever; in caſe of other felony, for only a year and a day; after which time

Digitized by Google

time it goes to the lord in a regular courſe of eſcheat, as it would have done to the heir of the felon, in caſe the feodal tenures had never been introduced. And that this is the true operation and genuine hiſtory of eſcheats will moſt evidently appear from this incident to gavel-kind lands, which ſeem to be the old ſaxon tenure, that they are in no caſe ſubject to eſcheat for felony, tho' they are liable to forfeiture for treaſon.

And as to incapacity of inheriting, ibid.

Hitherto we have only ſpoken of eſtates veſted in the offender at the time of his offence or attainder. And here the law of forfeiture ſtops; but the law of eſcheat purſues the matter ſtill farther, for, the blood of the tenant being utterly corrupted and extinguiſhed, it follows, not only, that all he now has ſhould eſcheat from him, but alſo that he ſhould be incapable of inheriting any thing for the future.

Diſtinction between forfeiture and eſcheat illuſtrated, ibid.

This may further illuſtrate the diſtinction between forfeiture and eſcheat. If therefore a father be ſeized in fee, and the ſon commits treaſon, and is attainted, and then the father dies; here the land ſhall eſcheat to the lord; becauſe the ſon, by the corruption of his blood, is incapable to be heir, and there can be no other heir during his life; but nothing ſhall be forfeited to the King; for the ſon never had any intereſt in the land to forfeit. In this caſe the eſcheat operates, and not the forfeiture; but in the following inſtance the forfeiture works, and not the eſcheat. As where a new felony is created by act of parliament, and it is provided that it ſhall not extend to corruption of blood; here the lands of the felon ſhall not eſcheat to the lord, but yet the profits of them ſhall be forfeited to the King ſo long as the offender lives.

Digitized by Google

Corruption of blood obſtructs deſcent, ibid.

There is yet a further conſequence of the corruption and extinction of hereditary blood which is this; that the perſon attainted ſhall not only be incapable himſelf of inheriting, or tranſmitting his own property by heirſhip, but ſhall alſo obſtruct the deſcent of lands or tenements to his poſterity, in all caſes where they are obliged to derive their title through him from any remoter anceſtor. The channel, which conveyed the hereditary blood from his anceſtors to him, is not only exhauſted for the preſent, but totally dammed up and rendered impervious for the future. This is a refinement upon the ancient law of feuds, which allowed that the grandſon might be heir to his grandfather, tho' the ſon in the intermediate generation were guilty of felony. But, by the law of England, a man's blood is ſo univerſally corrupted by attainder, that his ſons can neither inherit to him nor to any other anceſtor, at leaſt on the part of their attainted father.

conſidered as unreaſonable and unjuſt, ibid.

This corruption of blood thus ariſing from feodal principles, but perhaps extended farther than even thoſe principles will warrant, has been long looked upon as a peculiar hardſhip; becauſe the oppreſſive parts of the feodal tenures being now in general aboliſhed, it ſeems unreaſonable to reſerve one of their moſt inequitable conſequences; namely that the children ſhould not only be reduced to preſent poverty (which however ſevere is ſufficiently juſtified upon reaſons of publick policy) but alſo be laid under future difficulties of inheritance, on account of the guilt of their anceſtors. And therefore, in moſt (if not all) of the new felonies created by parliament ſince the reign of Henry the VIII. it is declared that they ſhall not extend to any corruption of blood. But as in ſome of the acts for creating felonies, (and

thoſe

Digitized by Google

thoſe not of the moſt atrocious kind) this ſaving was neglected or forgotten to be made, it ſeems to be highly reaſonable and expedient to antiquate the whole of this doctrine by one general law.

Forfeiture on what founded 4 Black. c. 29. 1 Black. c. 8.

The natural juſtice of FORFEITURE, or confiſcation of property for treaſon, is founded on this conſideration, that he who hath thus violated the fundamental principles of government, and broken his part of the original contract between King and people, hath abandoned his connexions with ſociety, and hath no longer any right to thoſe advantages which before belonged to him purely as a member of the community; among which ſocial advantages the right of transferring or tranſmitting property to others is one of the chief.

of real eſtates, by common law, 4 Black. c. 29. Foſt. 223.

FORFEITURE is twofold, of real and of perſonal eſtates. Firſt, as to real eſtates; by attainder in high treaſon a man forfeits to the King at common law all his lands and tenements in fee ſimple; and all leaſes for lives or freeholds deſcendable; (and all rights of entry thereon) which he held at the time of the offence committed, or at any time afterwards. This forfeiture relates backwards to the time of the treaſon committed, ſo as to avoid all intermediate ſales and encumbrances. But it does not take effect unleſs an attainder be had, of which it is one of the fruits; and therefore if a traitor dies before judgment pronounced, or is killed in open rebellion, or is hanged by martial law, it works no forfeiture of his lands; for he never was attainted of treaſon.

Digitized by Google

In what cases vested in the King without office, 2 Hawk. 448.

And the lands so forfeited by attainder are actually vested in the King without any office; because they cannot descend, the blood being corrupted; and they cannot be in abeyance. But by the common law such lands were not vested in the actual possession of the King during the life of such offender without an office.

By statute.

By the 28 Hen. VIII. c. 7. every offender convict of high treason by presentment, confession, verdict, or process of outlawry, shall forfeit to the King all lands which such offender shall have of any estate of inheritance (under which words estates in tail are comprehended) at the time of such treason committed or after; saving to every person other than the offenders, their heirs, and successors, all rights, &c.

1 Hale. 240.

And by 27 Eliz. c. 1. all offenders convict of any high treason, by any act of parliament, confession, verdict, or process of outlawry, shall forfeit as well all such rights, entries, and conditions, as also all such lands, tenements and hereditaments, which any such offenders shall have of any estate of inheritance, in use or possession, by any right, title, or means, at the time of any such treason committed, or at any time after. And the King shall be adjudged in actual and real possession of all such lands, tenements, &c. of the offenders so attainted without any office or inquisition to be found of the same; saving to every person other than the offenders in any treasons, their heirs and successors, and such persons as claim to any of their uses, all such rights as they shall have at the day of the committing such treasons, or at any time afore, as if this act had never been made.

Secondly,

Digitized by Google

Secondly, as to perſonal eſtates. The forfeiture of goods and chattels accrues in every one of the higher kinds of offence; in high treaſon or miſpriſion thereof, petit treaſon, felonies of all ſorts, whether clergyable or not, ſelf murder or felony *de ſe*, and in petty larceny. Forfeiture of perſonal eſtates. 4 Black. c. 29.

There is a remarkable difference or two between the forfeiture of lands and of goods and chattels.

Firſt, lands are forfeited upon attainder, and not before; goods and chattels are forfeited by conviction; becauſe in many of the caſes where goods are forfeited there never is any attainder, which happens only where judgment of death or outlawry is given; therefore in thoſe caſes the forfeiture muſt be upon conviction, or not at all; and being neceſſarily upon conviction in thoſe, it is ſo ordered in all other caſes; for the law loves uniformity. Lands forfeited only upon attainder, goods by conviction.

Secondly, in outlawries for treaſon or felony lands are forfeited only by the judgment; but the goods and chattels are forfeited by a man's being firſt put in the exigent, without ſtaying till he is *quinto exactus*, or finally outlawed; for the ſecreting himſelf ſo long from juſtice is conſtrued a flight in law. In outlawries lands forfeited only by the judgment, but goods by the exigent.

Thirdly, the forfeiture of lands has relation to the time of the fact committed, ſo as to avoid all ſubſequent ſales and encumbrances; but the forfeiture of goods and chattels has no relation backwards, ſo that thoſe only which a man has at the time of conviction ſhall be forfeited. Therefore a traitor or felon may *bona fide* ſell any of his chattels real or perſonal, for the ſuſtenance of himſelf and family, between the fact and conviction; for perſonal property Forfeiture of lands relates to the time of the fact, of goods to the conviction.

Digitized by Google

property is of ſo fluctuating a nature that it paſſes through many hands in a ſhort time, and no buyer could be ſafe if he were liable to return the goods which he had fairly bought, in caſe any of the prior vendors had committed a treaſon or felony. Yet if they be colluſively and not *bona fide* parted with, merely to defraud the Crown, the law will reach them; for they are all the while truly and ſubſtantially the goods of the offender; and as he, if acquitted, might recover them himſelf, as not parted with for a good conſideration; ſo, in caſe he happens to be convicted, the law will recover them for the King.

Of forfeitures on outlawries in civil caſes. 3 Bac. abr. 754.

Beſides thoſe forfeitures in criminal caſes, there is a forfeiture upon outlawries in civil caſes; for the retiring from the inquiry of juſtice is held ſo criminal in the eye of the law that it is puniſhed with the loſs of the offender's goods and chattels, and the iſſues and profits of his real eſtate.

The King thereby acquires only a pernancy of the profits. ibid.

But by ſuch outlawry the King has no eſtate, but only a pernancy of the profits, nor can he manure or ſow the ground; and his intereſt continues no longer than the party hath an eſtate, and determines with the party's death; and being originally introduced to compel the defendant to come in the ſooner and anſwer the plaintiff's demand, it may more eaſily be ſuperſeded or reverſed, and thereby the King's pernancy of the profits diſcharged, than an outlawry in a capital caſe.

Cattle of a ſtranger may be taken on a levari for the King. Salk. 395.

And the cattle of a ſtranger, *levant* and *couchant* on lands extended on an outlawry, may be taken for the King upon a *levari facias*, as the iſſues and profits of the lands; for otherwiſe there might be no iſſues at all, or the perſon outlawed

Digitized by Google

outlawed might defraud the King of the whole by letting the land to paſturage.

By the bare outlawry the party immediately forfeits his perſonal goods, and they are veſted in the King; but he does not forfeit the profits of his lands nor his chattels real till inquiſition taken. And therefore an alienation *bona fide*, after outlawry and before inquiſition, is good to bar the King of the pernancy; but if the outlaw make a feoffment after inquiſition, the feoffee has the eſtate, and the King ſhall have the profits.

Goods forfeited by the outlawry, but profits of lands or chattels real not till inquiſition. Salk. 395. Hard. 101. 176. 1 Lev. 33.

CHAP. XVIII.

OF LANDS PURCHASED BY ALIENS.

AN alien born may purchaſe lands or other eſtates; but not for his own uſe, for the King is thereupon entitled to them. If an alien could acquire a permanent property in lands, he muſt owe an allegiance equally permanent with that property to the King of Great Britain, which would probably be inconſiſtent with that which he owes his own natural ſovereign; beſides that thereby the nation might in time be ſubject to foreign influence, and feel many other inconveniencies.

An alien may purchaſe for the benefit of the Crown. 1 Black. c. 10.

But there muſt be an office or inquiſition found, to entitle the King to ſuch purchaſe; for ſince the freehold is in the alien, and he is tenant to the lord of whom the lands are holden, it cannot be diveſted out of him but by ſome notorious act, by which it may appear that the freehold is in another. But if an alien who purchaſes lands die, then the

In what caſe there muſt be an office found. Co. Lit. 2.

Digitized by Google

the freehold is in the King, without office found; becauſe no man can take it as heir to the alien, and therefore the freehold is caſt upon the King. But if an alien purchaſe, and afterwards is made a denizen and then has iſſue and dies, the iſſue ſhall inherit till office found; becauſe there is a perſon in being to take as heir to the denizen, upon whom the law caſts the freehold, which is not to be diveſted out of him without the ſolemnity of an office.

An alien merchant may take an houſe for his abode. Co. Lit. 2. 6. Poph. 36.

An alien cannot purchaſe a leaſe for years of lands; but if he be a merchant he may take a leaſe of an houſe for his habitation for years only; and this is for the encouragement of commerce; but if he depart the kingdom or die, it goes to the King, and not to his executors or adminiſtrators; becauſe it was only a perſonal privilege annexed to the alien as a merchant, and which conſequently muſt expire with him.

The Crown has a right to a diſcovery in a court of equity.

The King has the ſame right to the aid of a court of equity for a diſcovery of the facts on which his title is grounded as the ſubject has in ordinary caſes, and founded on the ſame principle of juſtice, viz. that it is againſt conſcience for one to enjoy another's property by concealing his property. So determined in the court of Exchequer in Weſtminſter-hall, in the caſe of the Attorney general, againſt Roſe Dupleſſis, Michaelmas 1751, upon an information in the nature of an Engliſh bill for an eſtate deviſed to the defendant who was an alien, and afterwards confirmed upon an appeal to the houſe of lords.

CHAP.

Digitized by Google

CHAP. XIX.

OF FORFEITURES IN MORTMAIN.

Occaſion of the clauſe in the ſtatute of *magna charta* to prevent giving lands to religious houſes, &c.

THE Clergy in former days had ſo great an aſcendant over the people by inſtilling into them notions of purgatory, and had ſo wrought on them by their art and management, that they prevailed on them to be very liberal of their poſſeſſions, and eſpecially at their deaths to diſpoſe of them to thoſe only who could promiſe them happineſs in another world. This proving very prejudicial to the lords, who thereby loſt the advantages of wardſhips, marriage, relief, eſcheat, &c. (lands in the hands of a religious houſe or perſon being conſidered as in a dead hand, *manus mortua*, yielding no fruits to the lord) occaſioned the clauſe of the ſtatute of *magna charta* 9 Hen. III. c. 56. by which it is enacted, that it ſhall not be lawful for any one to give his lands to any religious houſe and to take the ſame lands again to hold of the ſame houſe, &c.

How evaded, but afterwards farther enforced by 7 Ed. I.

But aggregate eccleſiaſtick bodies found means to avoid this ſtatute by purchaſing lands holden of themſelves, and by taking long leaſes. Alſo all eccleſiaſtical ſole corporations, as biſhops, &c. thought themſelves out of this ſtatute. To meet therefore with theſe evaſions the 7 Ed. I. Eng. called the ſtatute of mortmain, was made. By which it is provided, that no perſon, religious or other, ſhould buy or ſell or receive, under colour of a gift or term of years, or

Digitized by Google

any other title whatſoever, nor ſhould by any art or ingenuity appropriate to himſelf, any lands or tenements in mortmain, upon pain that the immediate lord of the fee, or on his default for one year the lords paramount, and in default of all of them the King, might enter thereon.

Further artifice of the clergy to elude the aforeſaid ſtatutes by feigned recoveries.

The clergy when they found themſelves prohibited by *magna charta* from purchaſing lands, and perceived that their evaſion of that law was provided againſt by 7. Ed. I. began to apply the judgments of the courts to their own advantage againſt the intention of the law; for they brought their *præcipe* againſt the tenant who had agreed either to give or ſell them the lands on demand, and proſecuted the ſuit as if it had been really an adverſary one; till the tenant according to the precedent agreement made default, which was always looked upon as ſufficient ground for a judgment in favour of the defendant. And the judges, preſuming all recoveries juſt and lawful which were proſecuted in the uſual courſe of law, would not bring thoſe covinous ones within the ſtatute, though they were apparently in *fraudem legis*, and attended with all thoſe inconveniencies which thoſe ſtatutes were made to prevent.

reſtrained by 13 Ed. I.

But the clergy were quickly ſtopped in this courſe; for 32 Weſtm. 2. 13 Ed. I. Eng. made theſe recoveries by default to be mortmain; and the expoſition of this ſtatute by the judges has been carried as far beyond the letter as their expoſition on 7 Ed. I. ſeems to have fallen ſhort of the meaning and intention of that law; for though the letter of this act extends only to recoveries by default, yet they, and with good reaſon, have extended it to all other recoveries, whether by demurrer or verdict or otherwiſe; for if theſe ſhould not be within the meaning of the act

an

Digitized by Google

an iſſue might be taken ſo much in favour of the clergy, and the evidence offered might be ſo weak, that the whole intention of the ſtatute would be eluded. 2 Inſt. 75, 429.

Afterwards they found out the method of conveying to uſes, which was firſt introduced to evade the ſtatutes of mortmain and ſerved them effectually; for they generally ſitting in Chancery, where uſes were ſolely cognizable, obliged the feoffee to execute the uſe according to the truſt and confidence repoſed in him. Further evaſion contrived by the clergy by conveying to uſes.

But this miſchief was provided againſt by the ſtat. 15 Rich. II. cap. 5. Eng. by which it is declared that if any be ſeized of any lands or other poſſeſſions to the uſe of any ſpiritual perſon, with purpoſe to amortize them, and whereof ſuch ſpiritual perſon takes the profits, they ſhall cauſe them to be amortized by the licenſe of the King and other lords, or diſpoſe of them to ſome other uſe; otherwiſe they ſhall be forfeit, according to the form of the ſtatute of 15 Rich. 2. as lands purchaſed by people of religion; and that no ſuch purchaſe to the uſe of ſuch ſpiritual perſons ſhall be thereafter made upon like pain. And that the ſame law ſhall likewiſe be of lands or other poſſeſſions purchaſed to the uſe of guilds and fraternities. And that lands purchaſed by corporations, or to their uſe, ſhall be within the compaſs of the ſaid ſtatute *de religioſis*. Remedied by 15 Ric. II. 5.

And whereas the ſtatutes had been eluded by purchaſing large tracts of land adjoining to churches and conſecrating them by the names of church-yards, ſuch contrivance is alſo declared to be within the compaſs of the ſtatutes of mortmain.

Digitized by Google

Feoffments to the uſes of bodies not corporate for ſuperſtitious purpoſes reſtrained by 23 Hen VIII. c. 10. Eng.

But during the times of popery, feoffments and other aſſurances were frequently made of lands, &c. to the uſe of pariſh churches, chapels, fraternities, and other bodies not corporate, for ſuperſtitious purpoſes; which though not ſtrictly alienations in mortmain were within the ſame miſchief; to prevent which, by the ſtat. 23 Hen. VIII. c. 10. Eng. it is enacted that all ſuch uſes ſhall be void.

Salk. 162.

And tho' there is no ſtatute to that effect in force in this kingdom, yet it is holden that the King as head of the church and ſtate is intruſted by the common law to ſee that nothing be done in maintenance or propagation of a falſe religion, and to direct and appoint all ſuch ſuperſtitious uſes to ſuch as are truly charitable.

Whether a deviſe be a conveyance in mortmain.

A deviſe to a corporation is not, it ſhould ſeem, within the ſtatutes of mortmain ſo as to entitle the Crown; for ſuch deviſe is by the ſtat. 10. Car. 1. Seſs. 2. c. 2. void; and therefore the lands ſo deviſed ſhall deſcend to the heir at law *. See Hob. 136. 2 Placit. 198 103

Whether leaſes for years are within the ſtatutes of mortmain.

6 Co. 234

It ſeems not clearly ſettled whether long leaſes for years are within the ſtatutes of mortmain. Brook in his abridgement ſays that a leaſe for 400 years is, for that 7 Ed. I. mentions a term amongſt other contrivances of eluding the law; but that a leaſe for 100 years is not within the ſtatute, being an uſual leaſe. Br. mort. pl. 39 cites 29 Hen. 8. And in another place he ſays that a rent charge for 80 years is within the ſtatute. Ibid. pl. 39 cites 4 Hen. 6, 9.

* Quere therefore of the legality of the proceedings on the will of doctor Baldwyn, formerly provoſt of Trinity college, which ſee in the appendix.

CHAP.

Digitized by Google

CHAP. XX.

OF THE MANNER OF PASSING SHERIFFS ACCOUNTS.

THE ſheriff is the King's bailiff of his county, and was anciently the receiver of all the King's revenue ariſing therein. There were ſeveral farms of the county that were under his particular care, that is to ſay, all thoſe farms that were held of the King as of his county. Theſe were under the ſurvey of the ſheriff, and he was charged with them, being obliged to anſwer them in all wants; and for theſe he pays in his * *profers*, becauſe they were reckoned part of the profits of his bailiwick. But the receipt of all the ordinary or certain part of the revenue is long ſince turned into other channels, and he is now accountable to the King only for what is called the caſual revenue.

The ſheriff the ancient receiver of the King's revenue. Gilb Ex. 144. Madox 643.

Every ſheriff before he takes upon him the exerciſe of his office is to enter into a recognizance of £500 with two ſufficient ‡ ſureties, conditioned that he ſhall by himſelf or his attorney make his *profers*, at the Exchequer, on the morrow of the cloſe of Eaſter and St. Michael, of the iſſues and profits of his bailiwick; and at Eaſter term,

His recognizance.

* The *profer* was a pre-payment made by the ſheriff out of the iſſues of his bailiwick. Madox 644. For this the ſheriffs now pay 15 ſh.

‡ But it does not appear that the ſecurity has been ſued whilſt the ſheriff has been ſufficient.

before

Digitized by Google

before the Aſcenſion, make a § view of his accounts of the iſſues and profits of his ſaid bailiwick, and ſatisfy at the receipt of the Exchequer all ſuch ſums of money as ſhall grow due to his Majeſty upon the ſaid view, before the end of the ſaid term; and alſo that he ſhall appear as aforeſaid before the Barons, on the morrow of All Souls, to make a true account of the iſſues and profits of his ſaid bailiwick, and ſatisfy and pay all ſuch ſums of money, goods, and other caſualties and things, as he ſhall receive or levy in reſpect of his Majeſty's revenue, or caſualties whatſoever, *&c.*

Times of iſſuing the ſeveral proceſs to him.

And the manner of the ſheriff's accounting at this day is as follows. There iſſue twice in every year, viz. in Hillary and Trinity vacations, the ſummoniſter's proceſs and the proceſs of the pipe, to the ſeveral ſheriffs of the kingdom; the former for the levying all fines, amerciaments, poſt-fines, forfeited recognizances, and ſuch like, which come by eſtreat into the Exchequer; and the latter for levying ſuch ſums as were *nil'd* on the ſummoniſter's proceſs, and formerly for all the certain revenue of the Crown, ſuch as the Crown rents; as it ſtill does for cuſtodiam rents, though theſe are accounted a part of the caſual revenue.

And what is *nil'd* on the ſecond ſummons of the pipe is, as is before mentioned, ſent down in the *ſchedula pipæ* into the office of the ſecond remembrancer, who thereon, once a year, viz. in Trinity vacation, ſends out the long or prerogative writ againſt goods, body, lands, heirs, executors and adminiſtrators.

§ The view was the entrance or forepart of the ſheriff's account, which ſtood *de bene eſſe*, whilſt he was purifying or liquidating it, by producing his warrants and vouchers, whereby he was to have an allowance or diſcharge of any ſums charged on him. Madox 644.

And

Digitized by Google

And the ſeveral ſheriffs of the kingdom are prefixed on their accounts as follows.

Days of prefixion to the ſeveral ſheriffs.

MICHAELMAS TERM.

County of Dublin, City of Do. County of Kildare, County of Meath, Town of Drogheda,	on the morrow of All Souls.
County of Carlow, King's County, Queen's County, County of Kilkenny, City of Do.	in eight days of St. Martin.
County of Weſtmeath, County of Louth, County of Wexford, County of Wicklow,	on the morrow of St. Martin.
County of Longford, County of Waterford, City of Do. County of Cavan,	in fifteen days of St. Martin.

HILLARY

Digitized by Google

HILLARY TERM.

County of Tipperary, County of Roſcommon, County of Leitrim, County of Down, County of Monaghan, County of Armagh,	in eight days of St. Hillary.
County of Tyrone, County of Donegal, County of Limerick, City of Do. Town of Carrickfergus.	on the morrow of the Purification.
County of Mayo, County of Fermanagh, County of Sligo, County of Galway, Town of Do. County of Antrim,	in fifteen days of St. Hillary.
County of Cork, City of Do. County of Clare,	in eight days of the Purification.

EASTER TERM.

City and county of Londonderry, County of Kerry,	in fifteen days of Eaſter.

This

Digitized by Google

The proceedings against them for default.

This prefixion being in the nature of a ſummons to the ſheriff to come in and make his *profers* and account, if he make default, the preſent courſe is to give him four days further, under a pain, to attend. And formerly the practice was to enter thoſe fines from four days to four days until three fines, viz. £10, £20, and £40, were ſet on him for his default; and then, if he did not attend, an attachment to the purſuivant iſſued againſt him. But now no more than one fine is impoſed in every iſſuable term, which is a great indulgence to ſheriffs *.

Matters preparatory to the ſheriff's accounting.

When a ſheriff attends to account, he is to be ſworn in court by the chief remembrancer to give a true and juſt account of all ſuch ſums of money as he has levied or lawfully might have levied to his Majeſty's uſe. (See Dalt. ch. 123.) When this is done, the treaſurer's remembrancer enters a rule of courſe for a day for the ſheriff's being appoſed in court. But before his appoſal he is to prepare for the paſſing of his accounts in the following manner, viz.

Making copy of proceſs.

He is firſt to make a copy of all the proceſs which has iſſued to him from the ſeveral offices in a book for that purpoſe.

Comparing, &c. with the ſummoniſter

Then to go to the ſummoniſter and to compare with him all the proceſs iſſued from that office, and to mark the ſums he *tots* himſelf with in the margin of his book.

* Anciently it ſeems in this kingdom (and it is ſaid the courſe is now ſo in England) if the ſheriff did not attend his day of prefixion, £5 per day being ſet on him as a fine for four days together for his default, then an attachment, and alſo a ſeizure *nomine diſtrictionis* iſſued againſt him for his non-attendance. See Madox 644. Gilb. Treat. of the Exch. 146.

Digitized by Google

And with the foreign appoſer. Then he is to bring the ſame proceſs to the foreign appoſer and compare and lodge it with him.

And with the clerk of the pipe. Then to bring all the proceſs of the pipe to the clerk of the pipe, *totting* as aforeſaid.

And with the comptroller. Then to bring the ſame proceſs to the comptroller of the pipe and compare with him, *totting* as aforeſaid, and lodge the proceſs with him.

And with the treaſurer's remembrancer. Then to bring all the proceſs iſſued from the treaſurer's remembrancer and compare with him, *totting* as aforeſaid, and to lodge the proceſs with him, as alſo an inquiſition which the ſheriff muſt take in the county, *&c.*

And with the clerk of the firſt fruits. Then to go to the firſt fruits office, and if he has any proceſs from thence he is to examine and lodge them there.

Giving notice of his appoſal. And he is to give notice to each office as he paſſes through, as alſo to the Auditor general, and the clerk or Solicitor for the caſual revenue, of the day of his appoſal.

Auditor general's duty during the appoſal. The Auditor general is to ſit in court during the appoſal of the ſheriff to take an account of the *tots* in the ſeveral proceſs, and to caſt them up, and to give in the total ſum to the treaſurer's remembrancer, who enters it in his book.

The court will give neceſſary orders. And during the account the court will give ſuch orders as are requiſite for the ſecuring of the ſaid debts, or for the releaſe of the ſubject. If the ſheriff make an inſufficient or an unſatisfactory anſwer they will order him to *tot* for ſuch charge. But in ſuch caſe the ſheriff may have a writ

Digitized by Google

a writ of aſſiſtance to levy the money; as he may in all caſes where he charges himſelf with any money he has not received.

Conſtats to be got by the ſheriff after appoſal.

After he is appoſed, he is to get a *conſtat* of his fines and profers from the Chief remembrancer, a *conſtat* from the treaſurer's remembrancer of the ſums charged in his proceſs, a *conſtat* from the ſummoniſter and clerk of the eſtreats of attainders, if any, if not, that there are none; and a *conſtat* from the clerk of the firſt fruits; which four *conſtats* muſt be lodged with the Auditor general, together with his own certificate of what waifs, eſtrays, felons or fugitives goods, if any, came to his hands, or if none, a negative certificate. Then he is to get a tranſcript upon thoſe *conſtats* and certificate from the Auditor general, and a tranſcript alſo from the foreign appoſer of what he charged himſelf with in the ſummoniſter's proceſs; which two tranſcripts are to be ſigned by the three Barons, and the tranſcript from the Auditor is to be entered with the ſecond remembrancer. Then he is to get his certificate of * allowance from the ſummoniſter and clerk of the eſtreats, and a *conſtat* from the comptroller of the pipe of the ſums charged in his proceſs; all which are to be fixed together and lodged with the clerk of the pipe, who then makes out the ſheriff's † *debet* thereon, which ſhows what money he

* This is an allowance of 5l. 2s. each ſeſſions for treating the juſtices and clerk of the peace at the quarter ſeſſions; provided that eight of the juſtices certify at the foot of the eſtreat that the ſheriff expended ſo much. And this allowance is to be out of the ſeſſion fines if ſo much be ſolvent; if not, the deficiency is to be out of his own pocket.

† It is worth obſerving that the clerk of the pipe omits inſerting in thoſe *debets* all ſuch ſums which the ſheriffs *tot* for in the ſummoniſter's proceſs, and which he conceives to be diſchargeable or reducible; which not only is a conſiderable loſs to the caſual

Digitized by Google

he is to pay. Then he is to bring the *debet* to the treasury, pay in the money, and get an Exchequer acquittance for it, which he is to bring back to the pipe office, to be annexed to his account. And if there be no charge standing out on his account he may have his *quietus*; but if there be, he cannot have it until he has fully cleared his account.

Old practice, as to compelling sheriff to pay his tots &c. by fine and attachment.

Formerly the sheriff after appoſal had but six days by the rules and course of the court to bring in his accounts from the several offices, to get his debet from the pipe office, and pay his tots into the receipt of the Exchequer. And if he neglected to pay his tots accordingly, the clerk of the pipe having certified his default to the treasurer's remembrancer, the course was to set three fines upon him, giving him four days between each fine; and if he still neglected, then there went an attachment to the pursuivant against him.

No sheriff to be attached for any neglect relative to his account but by writ, or warrant.

And the practice was, when the sheriff was brought in on such attachment, to make him account in custody and not depart till he had finished it. *

And

casual revenue, but tends to frustrate the execution of justice, as forfeited recognizances and fines imposed on officers of justice for breach of duty, and on other offenders, are contained in this process. Besides, several of these sums have been actually levied, and are in the hands of the sheriffs; and the delinquents, from the length of time sheriffs have to pay in their *tots*, have had full opportunity of applying to reduce or discharge them. Wherefore, it seems proper, that the clerk of the pipe should include these *tots* in the summoniſter's process in the *debet*, as well as others, or as the sums which are *totted* for in the process of the pipe, and of the second remembrancer, if not discharged or reduced at the time he delivers his *debet*; as by not doing so, the tots in this process are attended with the same mischief as the *onies* in the pipe process, *viz.* the keeping the accounts of sheriffs standing out for years. Note, post fines for licences to accord are also in the summoniſter's process.

* Formerly when an attachment issued to the pursuivant against a sheriff for not accounting, not paying his tots, or not clearing his accounts; he could not be discharged

Digitized by Google

And by a general rule, ſheriffs who neglected to pay their tots, or finiſh their accounts in due time were to ſtand committed, and the purſuivant was to take them into cuſtody, without further order, to prevent which there is a clauſe in the ſtat. 12 Geo. I. c. 4. that no ſheriff or ſubſheriff ſhall be attached by any officer of the court of Exchequer or other perſon, for not being appoſed on any writ or proceſs, for not finiſhing his accounts in due time, or for any contempt or neglect relating to his account, but by writ under the ſeal of the court, or by warrant for that purpoſe to be ſigned by the Lord Chief Baron, or in his abſence by either of the other Barons, to be executed by the purſuivant of the court or his deputy, in which warrant the name of ſuch ſheriff, *&c.* ſhall be particularly inſerted and his offence particularly ſpecified. Ibidem.

Afterwards * this practice was altered, and when the ſeveral ſheriffs came upon their accounts, the court gave them four days for paying into the treaſury the ſeveral ſums Altered to fines *ad infinitum*.

charged therefrom but by a *ſuperſedeas*, in conſequence of an order of court for the purpoſe, on his ſhewing, by the treaſury acquittance or clerk of the pipes certificate, that the tots were paid, and lodging the ſame with the ſecond remembrancer; as appears amongſt others, by the rules of this court of the 31 Jan. 1737, 21 and 25 July 1739 and 25 Apr 1740. Whereas of late years the purſuivant has taken upon him to diſcharge ſuch perſons from attachments, without ſuch authority, upon lodging the money with him; whereby the accounts in ſuch caſes have ſtood uncleared for years; and the money all the time remained in the purſuivant's hands.

* It may be here obſerved that until the year 1704, it ſeldom appears that more than three fines were impoſed upon ſheriffs either for not accounting, not paying their tots, or not finiſhing their accounts, but then the fines began to be more exceſſive, and the proceſs of attachment was neglected; and from the year 1709,

Digitized by Google

ſums with which they had totted themſelves; which if they failed to do, the court at the inſtance of the ſecond remembrancer, the firſt of the eight days after each iſſuable term, entered of courſe a conditional fine of five pounds on them, unleſs they paid their tots in four days; which if they neglected to do, that fine was made abſolute and a further fine impoſed, which was always double the laſt; and at the end of the term theſe fines iſſued in proceſs to the ſucceeding ſheriffs. If the ſheriffs did not pay in their tots before the following iſſuable term, the court on motion began to fine them *de novo*, and continued ſo to do every ſuch term, until their tots were paid in and their accounts cleared; which fines have ſome times amounted to £1200 and upwards, and were, as the former, iſſued in proceſs to the ſucceeding ſheriffs.

1709, until lately, fines were ſet on ſheriffs without end for their neglect, and no other proceſs whatſoever iſſued to compel them to this part of their duty. This practice was of great prejudice not only to the revenue but likewiſe to the ſheriffs; for after they had been appoſed in court they frequently left the proſecuting their accounts to their ſubſheriffs, who having got the king's money into their hands neither finiſhed their accounts nor paid the tots into the treaſury. And fines only being ſet on them for their neglect, and theſe going in proceſs to the ſucceeding ſheriffs, the ſubſheriffs for the time being, to indulge the preceding ſubſheriffs, without the knowledge of the ſheriff againſt whom the fine iſſued, *oni'd* on their accounts for thoſe fines from time to time; by which means the Crown was not only kept out of them, but ſometimes by the death of the ſheriffs or their ſureties they were entirely loſt, and the ſheriffs being often deceived by their ſubſheriffs, who informed them that every thing had been done, never heard of the fines againſt them until perhaps the ſubſheriff and his ſureties died or became inſolvent; ſo that the ſheriff found himſelf loaded with heavy fines, and was left to pay his tots and diſcharge his account at his own expenſe; all which would have been prevented, if the regular proceſs of the court had iſſued againſt him.

But

Digitized by Google

Late practice.

But ſince the ſtat. of 23 Geo. II. c. 13. the ſecond remembrancer does not iſſue any fine againſt a ſheriff for not accounting, not paying his tots or not clearing his accounts, until ſix months after his appoſal, and even then not but in an iſſuable term; ſo that if the appoſal be in Hillary term, the firſt fine will not be until the Hillary term following; and as an attachment is not to iſſue until after a third fine is eſtabliſhed, and as the fines are impoſed but every iſſuable term, it will be upwards of two years before the attachment iſſues. The firſt fine impoſed is £10, the ſecond £20, and the third £40. But this practice, which is productive of very great inconvenience and delay, ſeems to be founded on a miſconſtruction of this act, *which relates to ſubſheriffs only.*

Proceedings againſt them for ſums *oni'd.*

The ſheriffs in their accounts totting themſelves with ſome particulars, and in others *onying*, the courſe has been, to give them to the end of the next iſſuable term after their appoſal to procure receipts and other vouchers in diſcharge of the ſums *oni'd* for; and if they do not procure them within that time, then ſuch fines are entered and ſuch proceſs are ſent againſt them, as where they do not account or pay their tots; and for impoſing ſuch fines and iſſuing ſuch proceſs againſt them for ſuch their neglect, the clerk of the pipe's certificate is the treaſurer's remembrancer's warrant *.

By

* Here likewiſe has been of late great neglect in not purſuing the uſual method, and taking the regular proceſs for compelling the ſheriffs to clear their accounts; (for proceeding againſt them by fines only has been found ineffectual, as the ſheriffs, to whom ſuch fines iſſued in proceſs, *oni'd* for them, and their ſucceſſors might *oni* for them again, and ſo on *ad infinitum*;) whereby the Crown is defrauded,

Digitized by Google

Poundage allowed the ſheriff on debts to the Crown collected by him.

By the ſtat. 12 Geo. I. c. 4. all ſheriffs who ſhall levy any debts, duties, or money, (except poſt fines) due to his Majeſty, by proceſs to them directed upon the ſummons of the pipe or green wax [*or*] by *levari* out of the Exchequer, ſhall have an allowance on the accounts of 12 d. out of every 20 s. for any ſum not exceeding £100 by them levied and collected; and of 6 d. for every 20 s. over and above the firſt hundred pounds; and for all debts, duties, and ſums of money, (except poſt fines) due to his Majeſty, by proceſs [*on*] *fieri facias*, and extent iſſuing out of any of the offices of the court of Exchequer, one ſhilling and ſix pence out of every 20 ſhillings for any ſum not exceeding one hundred pounds by them levied or collected, and 12 d. for every 20 s. over and above the firſt £100 * provided ſuch ſheriff ſhall duly anſwer for the ſame upon his account by the day on which he ought to be diſmiſſed the court, or in ſuch time to which he ſhall have a day granted to finiſh his account.

When

defrauded, and the publick greatly injured. For the ſums uſually *oni'd* for, being fines and amerciaments ſet on ſheriffs and other officers by courts of juſtice for neglects and miſdemeanors, and recognizances forfeited in the King's bench and at aſſizes and ſeſſions, which were intended as puniſhments, are by means hereof rendered vain and fruitleſs. And ſometimes in fact theſe fines *oni'd* for have been received by the ſheriffs, and by neglect of calling on them regularly to clear their accounts are ſunk in their pockets and converted to their own uſe; but this inconvenience has been in a great meaſure remedied by a reſolution lately made by the court of Exchequer, of not permitting ſheriffs to *oni* on their accounts for former ſheriffs, but making them either tot for ſuch fines, or return inquiſitions finding the eſtates of the perſons ſo fined.

* This clauſe, by not being faithfully copied from one in the ſtat. 3 Geo. I. c. 15. Brit. of which it was intended to be almoſt a tranſcript, is not ſenſe; the word *or* being thro' miſtake omitted, and the word *and* being ſubſtituted in

Digitized by Google

When it appeared to the court that the ſubſheriff had received the King's money on the proceſs and neglected to pay it, it has been uſual for the court, at the inſtance and in aid of the ſheriff, to grant an attachment againſt the ſubſheriff.

Penalties on ſubſheriffs receiving King's money and not accounting.

And by the 23 Geo. II. c. 13. if any ſheriff of any county, or county of city or town corporate, ſhall pay his ſubſheriff or attorney any money, in order to be by them paid over in diſcharge of the accounts of ſuch ſheriff, and ſuch ſubſheriff or attorney ſhall neglect to pay over into the treaſury the ſums ſo to them intruſted, or which ſuch ſubſheriff ſhall receive on account of ſuch ſheriff, and to procure to be taken off, at their own coſts and charges, all fines laid on ſuch ſheriff, on account of his not paying in the ſums ſo received, within ſix months from the time that any ſuch ſums ſhall be ſo paid to ſuch ſubſheriff or attorney, ſuch ſubſheriff, or attorney, ſhall for ever after ſuch failure

As alſo on the attornies of ſheriffs.

in place of *on*. Whereby an inſtance is created amongſt many others that might be produced, of the inattention too often given to the framing and wording Iriſh ſtatutes. In the laſt ſeſſion of Parliament, heads of a bill were brought into the Houſe of Commons and paſſed there, *for the improvement of the caſual revenue and for the better execution of publick juſtice*, by giving ſheriffs, as a further encouragement to collect theſe branches of it, five ſhillings in the pound, for the ſums ſo collected; but theſe heads of a bill were thrown out by the Houſe of Lords. Such an act, it is thought if properly framed, beſides improving the caſual revenue, would be a great means of reſtraining the many riotous diſorders and flagrant breaches of the publick peace throughout the kingdom. It would encourage the ſheriffs to collect theſe caſualties, which would in time prevent the offences, inſtead of truſting this moſt important matter wholly to their bailiffs, as is the caſe at preſent, and ſwearing a poſitive oath upon their appoſal, on the return made by theſe low people; who, as well ſubſheriffs (it is well known) make largely thereby.

Digitized by Google

or neglect, be disabled to take or execute the office of subsheriff.

Time may be granted upon motion.

But it is thereby provided, that if any subsheriff or attorney shall apply by motion to the court to enlarge his time for paying in such money, and taking off such fines, the court may, upon proof by affidavit that the sheriff to be affected by such motion had due notice of such intended application, examine into the matter, and thereupon grant to the person so applying such further time for paying in the sums, and taking off the fines before mentioned, as to them shall appear reasonable; and in case the sums so received shall not be paid in, and all such fines taken off, within the time so allowed by the court, every subsheriff and attorney shall be liable to the penalties and disabilities aforesaid.

Forfeiture for taking on the office after incuring the disabilities.

And if any person who shall incur the disabilities aforesaid, or either of them, shall take upon him the office of subsheriff of any county or city, and be thereof convicted, he shall for every such offence forfeit £500, one moiety to his Majesty, and the other to such person as shall sue for the same.

Process to issue against Executors, &c. of sheriffs dying.

Henry Clarke, Esq; late sheriff of the county of Louth having died in office, ordered that *scire facias* do issue against his executors or administrators to compel them to enter on his accounts, 23 Jan. 1710 *.

* So where there are joint sheriffs, as in corporations, and one only has acted, upon an affidavit thereof the acting sheriff only shall be admitted to account; so where one has died who never acted, the survivor upon such affidavit shall also be admitted to account, without any *scire facias* against the executors or administrators of the deceased.

N. Loftus,

Digitized by Google

N. Loftus, Esq; late sheriff of the county of Wexford having been in a bad state of health, during his shrieffalty, and still continuing so, and not having intermeddled with the green wax process, or any other business of his office, which his Majesty was entitled to any account of, upon affidavit thereof, and that he was willing to pay all his *tots*, and such other demands as his Majesty might have on account of the said office, his personal attendance was dispensed with, and his subsheriff admitted to pass his accounts, his Majesty's attorney general consenting thereto; which it seems the court required, altho' the officer said that he had not known an instance before where, in such case the consent of the attorney general was required. 22 June 1765 †.

Sheriff admitted to account by his subsheriff.

Upon an application of the late sheriffs of the county of the town of Drogheda, to be excused from appearing and accounting, on an affidavit that they had not received any of the King's process, the court refused the motion; Baron Power observing that every sheriff is answerable *sub nomine vice comitis* for, and must pay in his *proffers*, and issues, whether he receives any of the process or not; and all waifs, estrays, goods of felons, and fugitives, &c. not granted away by the Crown, must likewise be accounted for by him as sheriff. Every sheriff therefore, as the King's ancient bailiff of his revenue, is bound by law to account, though he happen not to have received any of the process; but the not re-

Sheriffs not excused from accounting, the process not being delivered to them by the pursuivant.

† See Maddox 659, 659. &c. several instances where sheriffs and other officers accomptants to the King, were admitted to account by their attornies, and see the form of the sheriffs recognizance before.

Digitized by Google

ceiving ſuch proceſs is an excuſe for not collecting thoſe fines and other debts which can only be levied under ſuch proceſs: But if, on account of the neglect of the purſuivant in not delivering any of the proceſs, to the ſheriff the court ſhould excuſe the ſheriff from appearing and accounting, not only the certain annual revenue paid unto the Crown (anciently and at this day called the ſheriffs *proffers*) but the aforeſaid caſualties in ſeveral inſtances would be loſt, and many other obvious ill conſequences highly prejudicial to the caſual revenue would follow. Mich. 1772.

Sheriff having obtained his *quietus* not to be called in queſtion after four years.

By the ſtat. 7 W. III. c. 13. every ſheriff who ſhall paſs his accounts, and have his *quietus eſt*, his heirs, executors, *&c.* ſhall be diſcharged of all ſums of money which he ſhall have levied or received, and pretended not to be accounted for, unleſs ſuch ſheriff ſhall be called in queſtion within four years after the time of ſuch account paſſed, and *quietus eſt*. And every officer, who ſhall ſend out any writ or proceſs, or by whoſe default any writ or proceſs ſhall be ſent out, contrary to the act, ſhall for every ſuch offence forfeit to the party grieved £40, with his coſts and damages, to be recovered in any of his Majeſty's courts of record in Dublin.

Perſons obſtructing ſheriffs in the paſſing their accounts to make ſatisfaction.

And by the 12 Geo. I. c. 4. if any officer or other perſon concerned in the paſſing ſheriffs accounts, ſhall wilfully retard or hinder any ſheriff in the paſſing his accounts, or by his wilful neglect, abſence or other undue means, prevent any ſheriff from being appoſed or caſt out of court in due time, or, after payment or tender of their due fees in ſaid act aſcertained, ſhall neglect to enrol, make out, ſign, and deliver his *quietus* in due time, in every ſuch caſe the perſons ſo offending ſhall make ſuch

Digitized by Google

ſuch recompence to the party aggrieved, as ſhall be ordered by the barons, upon complaint exhibited to them in a ſummary method.

Whereas the uſual practice of the court is, that all ſheriffs of the kingdom ſhould pay in or legally diſcharge all ſuch ſums of money as upon their appoſal they *tot* themſelves with, within ſix days of their being ſo appoſed, and the court taking notice that the ſeveral ſheriffs do, after their being ſo appoſed, neglect proſecuting, paying, or diſcharging their ſaid *tots*, for conſiderable times, &c. to his Majeſty's apparent prejudice, &c. It is ordered that every ſheriff, who, within ſix * days after appoſing as aforeſaid, does not pay or legally diſcharge his *tots* as aforeſaid, ſtand attached by the purſuivant of the court, until the further order of the court; whereof the ſaid purſuivant is not to fail, but to attach the ſaid ſheriff by virtue hereof, as often as occaſion ſhall require as aforeſaid. Rule, 19th Nov. 1767.

Whereas by former † rules of the court the ſheriffs of the ſeveral counties, cities, and townſhips of this kingdom were required to enter the names of their ſeveral attornies, and file their warrants of attorney in the court, to the end his Majeſty's officers may know when to call for ſuch returns from ſaid ſheriffs, as they make on his Majeſty's proceſs, which the ſaid ſheriffs hitherto failing to do. It is now ordered for the advancement and furtherance of his Majeſty's ſervice, that every attorney of Rule, 13th May 1672.

* This rule is not now purſued, ſee before, p. 172.

† Upon the ſtricteſt ſearch for ſeveral years before, I cannot find any rule to this purpoſe.

the

Digitized by Google

the court, who is appointed for any of the ſaid ſheriffs, do, within ſix days after the receipt of their warrant of attorney file the ſame in this court; and every attorney that ſhall fail therein is to forfeit unto his Majeſty the ſum of £5 ſterl. as a fine. And it is further ordered that all ſheriffs who ſhall fail in electing and making their attornies, and granting and ſending them ſuch warrants as aforeſaid, ſhall be proceeded againſt according to the ſtatute in that caſe made and provided.

Rule, 26th May 1684. Upon motion of the attorney for the commiſſioners of his Majeſty's revenue, that ſeveral of the ſheriffs of this Kingdom, are very ſlow and remiſs in proſecuting the clearing their accounts, or paying in their *tots* after they are appoſed, tho' the court never gave them above ſix days after their appoſal to pay in their *tots*, &c. Ordered that if any ſheriff, who ſhall be appoſed after this day, ſhall be remiſs, and not pay in his *tots* in ſix days * after appoſal, that then attachments to the purſuivant ſhall of courſe iſſue againſt him that ſhall be ſo in contempt as aforeſaid.

Rule, 26th April 169. It is this day ordered by the court, that their Majeſty's Auditor general do, for the future, upon the paſſing any ſheriff's accounts, give notice to Mr. Richard Thompſon, and Mr. Chetwood, who are concerned for the commiſſioners of his Majeſty's revenue, upon the paſſing the ſheriffs accounts in the ſaid office, to the end the ſaid ſheriffs may be fully charged for the cattle, &c.

* Vide ante.

Upon

Digitized by Google

Upon motion of Mr. Howard, ſolicitor for the caſual revenue, it is ordered for the future, that the ſheriffs of this kingdom do give notice in writing to the ſolicitor for the caſual revenue, of their paſſing their accounts, to the end that the ſaid ſheriffs may be fully charged. Rule, 3d June, 1761.

Where a ſheriff hath *totted* or *oni'd* for a former ſheriff, or charged himſelf in his accounts, for any perſon whatſoever, and hath not levied the ſums he ſo charged himſelf with, he may apply to the court for a writ of Aſſiſtance, which is granted upon the motion of an attorney and an affidavit at the foot of the ſchedule, from the pipe roll, of the ſeveral ſums the ſheriff charged himſelf with, that ſuch ſums nor any part thereof have or hath been received by him, or by any perſon for his uſe, but are ſtill ſtanding out; and ſuch writ of *aſſiſtance* is in the nature of an execution, to enable the ſheriff to levy the ſame, of the body, goods, and lands of the perſons for whom he ſo *oni'd*, or charged himſelf, and an enquiry may be held thereon; and if lands be found upon ſuch inquiſition returned, a cuſtodiam ſhall be granted. Writ of *aſſiſtance* in aid of the ſheriff when to iſſue.

But theſe *onies* for former ſheriffs ſeldom happen of late, as inquiſitions finding their eſtates are now expected by the court upon the proceſs of the pipe, purſuant to the aforeſaid rule of the 24th of February 1695, which rule had a long time been neglected, and theſe *onies* carried on from ſheriff to ſheriff for a courſe of years, to the great diſtreſs and loſs to ſeveral ſheriffs.

And

Digitized by Google

Inquiſition and cuſtodiam thereon.

And this inquiſition and the cuſtodiam thereon are to be proceeded upon in the ſame manner as all others are; and when the ſheriff is ſatisfied the ſums for which the writ of *aſſiſtance* iſſued, either by having received them, by their having been diſcharged by the court, or paid into the treaſury by the perſons chargeable therewith, the cuſtodiam may be diſſolved on a conſent of the attorney for the ſheriff at whoſe ſuit the writ of *aſſiſtance* had iſſued, the rule of which is entered of courſe.

Cuſtodiam againſt ſheriffs for not clearing their accounts.

So, where the cuſtodiam is upon proceſs at the ſuit of the Crown, againſt the ſheriff for not clearing his accounts, on the ſheriffs againſt whom the ſame had iſſued, diſcharging the fines and reducing the recognizances for which the *ouies* were, and paying the reduced ſums into the treaſury, an order is conceived, on conſent of the ſolicitor for the caſual revenue, that the cuſtodiam ſhall be diſſolved, which rule is alſo entered of courſe.

Fines impoſed on ſheriffs, how reduced.

So, where fines have been impoſed on ſheriffs for non-execution, or for miſ-execution of any proceſs directed to them from any of the courts above, and that the ſame have been eſtreated and iſſued in proceſs, they may upon ſufficient cauſe ſhewn, or by conſent of the attornies who iſſued the writs, be reduced by the commiſſioners of reducement to whatever ſums the ſaid commiſſioners may think proper; and then, upon motion of the ſheriff's attorney, an order is conceived that the clerk of the pipe do make out a *debet* of the ſum to which the fines were reduced, for paying of the ſame

Digitized by Google

ſame unto his Majeſty's receipt, and on payment thereof that the ſaid fines be abſolutely diſcharged; and if ſuch ſheriff hath taken any bonds, bills, or any other ſecurities for, or on account of, the ſaid fines, he is to reſtore the ſame; or if he hath the body of the ſheriff on whom they were impoſed in cuſtody for that cauſe only, he is on ſight of the ſaid order to enlarge him, and the preſent ſheriff is to be thereof exonerated on his accounts.——But note, this application to the court of reducements is not neceſſary but in the caſes of foreign fines, which (as has been ſaid before) are fines for the ſame cauſes, impoſed by the other two ſuperior courts of record, and eſtreated into this; for the fines impoſed in ſuch caſes by this court, where the writ has iſſued from it, may be diſcharged, on ſuch conſent as aforeſaid, of the plaintiffs attorney, he being one of its own officers, on paying ſome ſmall ſum, as is before mentioned, into the poor box.

Whereas it appeared, on the appoſal of the ſheriffs of the counties of Leitrim, and Roſcommon, that the green wax proceſs, which iſſued out of the proper offices had not been delivered by the purſuivant to them, and the court being informed that by a ſtanding rule * thereof, affidavits ſhould be made of the delivery of the proceſs to the reſpective ſheriffs; it is therefore this day ordered, that the purſuivant attending this court do on the firſt day of every Michaelmas term file an- Rule, 28th Feb. 1774.

* Mr. Howard, who ſearched the books for above an hundred years could not find ſuch a rule.

Digitized by Google

† affidavit in the proper office, ſetting forth the reſpective times when, and to whom, the ſaid green wax proceſs were delivered by him or his meſſenger.

† It is impoſſible for the purſuivant to make this affidavit unleſs he delivers them himſelf, which is almoſt impoſſible; and that his meſſengers ſhould make ſuch affidavits, would be attended with no ſmall expenſe; and if the purſuivant does his duty they are unneceſſary.

N. B. This rule ſhould have been in chap. 14, but was not known when that chapter was in the preſs.

CHAP.

Digitized by Google

CHAP. XXI.

Of the FORFEITURES in this KINGDOM by the REBELLION in 1641.

Two conſiderable forfeitures in this kingdom.

THERE were two conſiderable forfeitures in this kingdom, which, as they were attended with very peculiar circumſtances, and as ſeveral acts of parliament were made relative to them, under which a great part of the landed property of this kingdom is derived, deſerve a more particular enquiry.

At what times.

Of thoſe two forfeitures the firſt was occaſioned by the rebellion which broke out in this kingdom on the 23d of October, 1641; the other by the rebellion in 1688, after the abdication of King James and the revolution in favour of William III. and Queen Mary.

The rebellion in 1641.

The former of theſe rebellions was begun and carried on, whilſt the civil war was ſubſiſting in England between King Charles I. and his ſubjects; and was afterwards quelled, and the kingdom reſtored to peace, during the uſurpation of Oliver Cromwell, and before the reſtoration of King Charles II. by the contributions and aſſiſtance of ſeveral of his Majeſty's ſubjects both in England and Ireland.

Act of 17 Car. I. Eng. for the encouragement of adventurers.

And numbers of perſons, who had eſtates in land and other properties, having been engaged and concerned in this rebellion, the forfeitures to the Crown were ſo conſiderable that the interpoſition of the Engliſh parliament was by it judged neceſſary; and accordingly by an act

Digitized by Google

paſſed there, 17 Car. I. it was amongſt other things enacted, that all ſuch rights, titles, intereſts, &c. as the ſaid rebels, or any of them, on the ſaid 23d of October, 1641, had, or afterwards ſhould have, in any lands or other hereditaments, ſhould be forfeited to his Majeſty, and ſhould be deemed, adjudged, veſted, and taken to be in the actual and real poſſeſſion of the ſaid King, his heirs and ſucceſſors, without any office or inquiſition thereof to be found.

And reducing the rebels.

And for reducing the rebels, and diſtributing their lands amongſt ſuch perſons as ſhould advance money and become adventurers in the reduction, two millions and a half of acres were to be aſſigned and allotted in this proportion, viz. each adventurer of £200 was to have 1000 acres in Ulſter; of £300, 1000 acres in Conaught; of £450, 1000 acres in Munſter; and of £600, 1000 acres in Leinſter; according to Engliſh meaſure. And the bogs, woods, loughs, and barren mountains, were to be caſt into theſe two millions and a half of acres, and ſo thrown into each man's diviſion.

Quit rents.

And out of thoſe acres there was to be a yearly quit-rent reſerved to the Crown, viz. one penny in Ulſter, three half-pence in Conaught, two pence farthing in Munſter, and three-pence in Leinſter.

Survey and allotment directed.

And by the ſaid act a commiſſion was to iſſue to ſurvey all the lands of the rebels that ſhould be forfeited, and to meaſure 625,000 acres in each province, caſting in bogs, mountains, &c. as above. And theſe lands were to be divided amongſt the adventurers by equal lot by the commiſſioners appointed under the great ſeal; and each allotment was to be returned into the high Court of Chancery.

Digitized by Google

Chancery. And every adventurer, by such allotment, was to be in actual seizin of his share.

Adventurers of a certain quantity to have manors, &c.

And by the act every person within three months after allotment that should have 1000 acres in Leinster, 1500 in Munster, 2000 in Conaught, or 3000 in Ulster, was to have power to erect a manor, with a court baron and a court leet, with all other privileges belonging to a manor, and with deodands, fugitives goods, *&c.*

Ordinance, dividing most of the Irish into four classes.

In the year 1652, the kingdom being reduced and the rebellion ended, the English parliament published an ordinance, called, an ordinance for the settling of Ireland; in which, declaring that it was not their intention *to extirpate the whole nation*, almost all the papists of the kingdom who were worth 10l. were divided into four classes.

First class excepted from life and estate.

First, all persons who before the 10th of November, 1642, had contrived, acted, or aided the rebellion, murders, or massacres, which began in October, 1641, and all jesuits, priests, *&c.* who had any way contrived, aided, or abetted, and all persons who since the 1st of October, 1641, had slain any person not bearing arms for the English, or who, not being then maintained in arms under the command and pay of the Irish against the English, had slain any person maintained in arms for the English, and all persons, who being in arms against the parliament of England, should not lay them down in twenty-eight days, and submit to their authority, were excepted from pardon of life or estate.

Second class to be banished, and forfeit two thirds.

Secondly, all persons (not being comprehended in any of the former qualifications) who had born command in the

the war of Ireland againſt the parliament of England, were to be baniſhed during the pleaſure of the parliament, and to forfeit two thirds of their eſtates; and their wives and children to be aſſigned lands to the value of the other third, where the parliament ſhould appoint.

Third claſs to forfeit a third.

Thirdly, all perſons of the popiſh religion (not being comprehended in any of the former qualifications) who had reſided in the kingdom, at any time from the 1ſt of October, 1641, to the 1ſt of March, 1650, and had not manifeſted their conſtant good affection to the intereſt of the commonwealth of England, were to forfeit one third of their eſtates, and to be aſſigned lands to the value of the other two thirds, where the parliament ſhould appoint.

Fourth claſs to forfeit a fifth.

Fourthly, all other perſons who reſided in Ireland within the time aforeſaid, and had not been in arms for the parliament, or manifeſted their good affections to its intereſt, having an opportunity to do ſo, were to forfeit one fifth of their eſtates.

Ordinance for the ſatisfaction of adventurers and ſoldiers.

By an ordinance made in the year 1653, for the ſatisfaction of the adventurers and ſoldiers, the forfeited lands in the counties of Limerick, Tipperary, and Waterford, in the province of Munſter; the King's and Queen's counties, Eaſt and Weſtmeath, in the province of Leinſter; Down, Antrim, and Armagh, in the province of Ulſter; together with the county of Louth if neceſſary, except the barony of Atherdee, were to be charged with the ſums due to the adventurers and ſoldiers, according to the rates before-mentioned; and to be divided between them by baronies moietively by lot.

And

Digitized by Google

And for the ſatisfaction of the arrears of the forces there, who ſhould be immediately diſbanded, ſeveral other proportions of forfeited lands were ſet out; particularly, the forfeited lands beginning at the end of one ſtatute mile round the town of Sligo, and ſo winging upon the coaſt, nor above four miles diſtant from the ſea; which was called the mile-line. Satisfaction for the diſbanded forces in the mile-line.

Purſuant to this ordinance, commiſſioners were appointed for putting it in execution, and for taking a ſurvey of the forfeited lands, and for appointing a court for receiving and hearing claims. Commiſſioners appointed.

And by the inſtructions given to the commiſſioners, the ſecond and third claſſes of the Iriſh above-mentioned, who forfeited one third or two thirds of their eſtates, were to be tranſplanted into the province of Conaught and the county of Clare, for the proportions to be allotted to them, except the mile-line; which line was intended to cut off the communication of the Iriſh with the ſea, as the Shannon was to cut them off from the reſt of the kingdom. Iriſh to be tranſplanted to Conaught and Clare.

Purſuant to theſe ordinances and inſtructions, commiſſioners of delinquency ſat at Athlone, to determine the qualifications of papiſts; and upon their decrees other commiſſioners who ſat at Loughrea ſet out the tranſplantations.

Many of the papiſts did not take out their decrees, and the tranſplantation was not compleated at the reſtoration; although all the papiſts lands were ſeized and ſequeſtered, and the ſurveys were in hand and actually taking; and being Tranſplantation not compleated at the reſtoration.

Digitized by Google

being thus ſeized and ſequeſtered on account of the rebellion, the act of ſettlement afterwards veſted them in the Crown.

Thus ſtood the ſettlement between the parliament of England and the rebels. But, for a clearer explanation of the acts of ſettlement and explanation, it is neceſſary to take a ſhort view of the ſeveral tranſactions and treaties between the King and the rebels.

Ceſſation of arms between the King and rebels.

About the 15th of September, 1643, there was a ceſſation of arms agreed upon and declared between the King and the rebels; and the 30th of July, 1646, articles of peace were agreed upon between his Majeſty and them, which were afterwards broke by the interpoſition of the Pope's nuncio.

Peace concluded between them.

Afterwards on the 17th of January, 1648, peace was again concluded between them, which the Earl of Antrim, O'Neill and others in Ulſter, refuſed to ſubmit to; ſeveral of thoſe who had ſubmitted to the King laid down their arms, and upon the general tranſplantion were allotted to their proportions, according to the act for the ſettlement of Ireland, in the province of Conaught and Clare. Others of them attended King Charles II. in his exile, after the peace, and waited his reſtoration for a reſtitution of their eſtates. There was alſo another ſet of men to be provided for; and theſe were the proteſtant officers who had always continued loyal, and had ſerved in his Majeſty's army, and under his authority, from the beginning of the war to 1649; whoſe arrears had never been paid, on account of their loyalty, when Cromwell aſſigned lands to ſatisfy the reſt of the army. The King likewiſe thought himſelf in

Digitized by Google

in ſome ſort obliged to take care of the intereſts of thoſe adventurers who had lent their money upon the credit of acts of parliament to which his father had aſſented; and likewiſe of the officers and ſoldiers who had lands ſet out for ſatisfaction of the arrears of their pay.

King Charles IId's declaration for the ſettlement of Ireland. Proviſion made for the adventurers.

And, in order to ſatisfy all parties he, on the 30th of November, 1660, ſigned his declaration for the ſettlement of Ireland. In which he confirms, in the firſt place, to the adventurers all the lands poſſeſſed by them on the 7th of May, 1659, and allotted to them according to the act of 17 Car. I. as to Engliſh or plantation meaſure; and engaged to make good the deficiencies of ſuch as made proof of them before a certain day.

And for the ſoldiers.

He next confirms the lands poſſeſſed by the ſoldiers and allotted them for their pay before the 7th of May, 1659; excepting church lands, and ſuch eſtates as were either procured by bribery, forgery, or perjury; or ſet out by falſe admeaſurement; or which belonged to any of the regicides and halberdiers; or to others who had ſince his reſtoration endeavoured to deſtroy the publick peace, or manifeſted an averſion to his reſtoration and government, or which had been decreed by the court of claims or Exchequer to any perſon.

And for the forty nine officers.

The officers who had ſerved before June 5th, 1649, (except ſuch as had received lands for their pay due to them ſince that day) were to be ſatisfied for their reſpective arrears out of forfeited lands in ſeveral counties therein named.

Digitized by Google

And for proteſtants whoſe eſtates had been given to adventurers.

Proteſtants, whoſe eſtates had been given to adventurers or ſoldiers (except ſuch as had been in rebellion before the ceſſation, or had taken out decrees for lands in Conaught, or Clare, in recompenſe of their former eſtates, were to be forthwith reſtored, and the others repriſed.

And for innocent papiſts.

Innocent papiſts, who had been diſpoſſeſſed, altho' they had ſued out decrees and were poſſeſſed of lands in Conaught or Clare, in lieu of their former eſtates, were notwithſtanding to be reſtored to their former eſtates; and the adventurers or ſoldiers removed to make room for ſuch papiſt were to be forthwith repriſed. But there was an exception as to innocent papiſts diſpoſſeſſed of eſtates in corporations, who were to be repriſed in forfeited lands near ſuch corporations.

And for rebels, who had ſubmitted and adhered to the peace.

Rebels, who had ſubmitted and conſtantly adhered to the peace, and remaining at home, had ſued out decrees and obtained poſſeſſion of lands in Conaught, were to be bound thereby, and not be relieved againſt their own act. But if they had ſerved faithfully under his Majeſty's enſigns abroad, and had not obtained decrees and lands in Conaught, they were to be reſtored to their former eſtates; but not until the adventurer or ſoldier who was to be removed had a repriſe aſſigned to him, it being more inconvenient to the latter than to the former to wait for repriſals.

Quit rents reſerved.

And every ſuch adventurer and ſoldier ſo ſettled, and every perſon ſo reſtored or repriſed, was thereby to pay to the King, his heirs and ſucceſſors, a rent of threepence for every acre in the province of Leinſter, twopence

Digitized by Google

pence farthing for every acre in Munſter, three-halfpence for every acre in Conaught, and one penny for every acre in Ulſter, according to the Engliſh meaſure.

Commiſſioners appointed for executing the declaration, and inſtructions given them. How to proceed as to the adventurers.

By a commiſſion under the great ſeal of this kingdom, bearing date 30th of April in the 13th year of his reign, his Majeſty appointed Commiſſioners for putting into execution the ſeveral matters contained in his ſaid declaration, and gave them inſtructions for that purpoſe, by which they were to caſt up the whole debt and demand of the adventurers, as well thoſe who were ſatisfied, as thoſe who were in part or the whole deficient, as alſo all the forfeited lands aſſigned to or for the adventurers, according to the ſurvey commonly called Doctor Petty's Down admeaſurement; and they were to compare the ſaid demands and lands together, and what the ſaid lands fell ſhort of ſatisfying the adventurers, according to the rates, meaſures, and proportions, of which all or any of the adventurers were poſſeſſed on the 7th of May 1659, they were to ſet apart ſo much of the forfeited lands in the counties of Lowth, Catherlough, Kildare, or ſome other convenient place, for their ſatisfaction.

Proclamation to be made for the adventurers to return certificates of their allotment.

And in order to the more particular apportioning or dividing the ſaid lands among the adventurers, they were to cauſe proclamation to be made in all places in Ireland, directing every adventurer, his aſſignee, or agent, who had received any ſatisfaction in land for his adventure, within 40 days after ſuch proclamation, to deliver to the commiſſioners, in writing under his hand and ſeal, a certificate of the houſes, lands, &c. poſſeſſed by him, together with the content of acres, both profitable and unprofitable, as the ſame were admeaſured to him; and

Digitized by Google

if ſuch adventure were for houſes in any city, ſuch adventurer was to deliver in not only the particulars ſet out to him, but alſo the value of them.

And the adventurers and ſoldiers to return the ſurveys of their lands.

And ſuch of the ſaid adventurers and ſoldiers as had taken ſurveys of their lands were at a certain day to bring in to the commiſſioners ſuch ſurveys, or duplicates thereof, together with the field books; which the commiſſioners were carefully to compare with the ſurveys taken by order of the late pretended powers; and if any conſiderable difference ſhould be found, they were to aſcertain ſuch adventurer's and ſoldier's poſſeſſion, by ſuch of the ſaid ſurveys as ſhould be moſt for the King's advantage; yet ſo, that if the ſoldier or adventurer ſhould find himſelf aggrieved, they were to appoint ſworn ſurveyors to re-ſurvey the lands in queſtion, *&c.* and if information ſhould be made to the Lord Lieutenant, *&c.* that profitable lands were enjoyed for unprofitable, the ſame was to be inquired of by a jury; and the profitable ſo enjoyed was to be re-aſſumed for repriſals of others.

The commiſſioners to make up books, *&c.*

And the ſaid commiſſioners were out of the ſaid certificates and ſurveys to make up books of what was due to each adventurer, and to aſcertain the poſſeſſion of ſuch to whom lands were aſſigned, therein expreſſing who was the former proprietor, the town-land or denomination, *&c.* the content, number of acres, the pariſh, barony, county, and province in which ſuch lands lay; and where it appeared that any adventurer or his aſſignee had more lands than were ſufficient to ſatisfy his debenture, and that ſuch perſon was in any other place deficient, or had purchaſed the right of any deficient adventurer, ſuch overplus was to be aſſigned unto him towards ſatisfaction of ſuch deficiencies.

And

Digitized by Google

The qualifications of innocent papists.

And in the reſtoring of innocents to their eſtates the commiſſioners were to obſerve the following directions, viz. not to reſtore any as an innocent papiſt, that, at or before the ceſſation which was made upon the fifteenth day of September, 1643, was of the rebels party; nor any, who being of full age and ſound memory enjoyed their eſtates real and perſonal in the rebels quarters; (provided that, where any citizen or inhabitant of the city of Cork, or of the town of Youghal, or any other perſon, was not permitted to live in the Engliſh quarters, but was expelled from thence, and driven into the quarters of the rebels, then and in ſuch caſe, ſuch inhabiting in thoſe quarters, and there receiving any benefit of their eſtates, ſhould not be conſtrued or adjudged any bar or impeachment of their innocence;) nor ſuch as entered into the Roman catholick confederacy, at any time before the articles of peace concluded in 1648; nor ſuch as at any time adhered to the nuncio's or clergy's party, or papal power, in oppoſition to the King's authority; nor ſuch as had been excommunicated for adhering to the King's authority, and afterwards owned their offences for ſo doing, and were relaxed thereupon from their excommunication; nor ſuch who derived their titles to their eſtates from any who died guilty of any the aforeſaid crimes; nor ſuch as pleaded the articles of peace for their eſtates; nor ſuch as, being in the quarters which were under the authority of the late or preſent King, held correſpondence with, or gave intelligence to, ſuch as were then in oppoſition againſt the late or preſent King in Ireland; nor ſuch as before any of the peaces in 1646, or 1648, ſat in any of the confederate Roman catholick aſſemblies

Digitized by Google

assemblies or councils, or acted upon any commissions or powers derived from them, or any of them; nor such as empowered agents or commissioners to treat with any foreign papal power beyond seas, for bringing into Ireland foreign forces, or were persons who acted in such negotiations; nor such persons as had been wood-kerns or tories before the marquis of Clanrickard's leaving the government of that kingdom.

Adventurers &c. removed to be repriſed forthwith.

And the said commissioners were to take care that adventurers and soldiers in the possession of the estates of any innocent protestant, or papist restored to his estate, should be repriſed in lands of equal value.

To prepare a particular of forfeitures in the counties of Wicklow, &c.

The commissioners were to prepare a particular of all the forfeited lands in the counties of Wicklow, Longford, Leitrim and Donegal, and also of the forfeited lands, &c. not already disposed of, in Conaught and Clare, being within a mile of the Shannon, or of the Sea, commonly called the mile line, and within any corporation in Ireland; and they were to get the same valued, deducting the value of the improvements by building or repairing houses, on any leases or contracts for leases in any of the corporations aforesaid, the value of which improvements were to be ascertained.

How to proceed as to the 49 officers.

The commissioners were then to prepare an account of the personal arrears of such officers, as served in Ireland before the 5th of June, 1649, and had not received any lands or money in satisfaction of their arrears, before or since the said 5th of June, 1649, and the commissioners were to make an estimate of the respective securities appointed for the satisfaction of such officers; in order to which,

Digitized by Google

which, they were to value the houſes, lands, &c. at eight years purchaſe, deducting the value of the improvements, and if the ſaid ſecurity ſhould not extend to ſatisfy twelve ſhillings and ſix pence in every pound of the ſaid arrear, they were to proportion the ſatisfaction according to the ſecurity; then the ſaid ſecurity was to be ſold by publick ſale to the beſt bidder, not under eight years purchaſe, deductions being made for the improvements *. And by theſe inſtructions 18 pence in the pound of the value of the houſes ſet out in the 49 ſecurity, were to be reſerved to the crown.

Patents to be paſſed upon certificates ſigned by the commiſſioners &c.

And for the better quieting and ſettling the ſeveral perſons intended to be provided for by the declaration and this act, the chief governor for the time being, upon certificates ſigned by the commiſſioners, or any five or more of them, expreſſing the names of the perſons, the quality of their eſtates, the number of acres, the barony, county, and province in which ſuch eſtates lay, and the rent reſervable to the Crown, was authorized, at the requeſt of the perſons ſo concerned, to cauſe effectual letters patent under the great ſeal to be paſſed to them, without any further or other orders from the King.

* Yet note, that this ſecurity was afterwards made up into lots, and paſt in certificates and patents to certain truſtees, in truſt for the ſeveral perſons concerned in the lots, according to their reſpective debentures, their proportions being mentioned in the patent of every lot; and every perſon concerned had a right in equity to compel the ſaid truſtees or patentees to convey unto him his proportion of the lot, being eſtimated according to the proportion of his debt. But many of the inferior officers have been to this day without ſatisfaction, and the whole has been ſwallowed up by the truſtees, who generally were the principal perſons concerned.

The

Digitized by Google

Where the commiſſioners books were to be depoſited.

The commiſſioners, having fully executed their commiſſions, were to deliver up their books unto the Auditor general, and duplicates of the ſame to the Surveyor general, to remain there as of record.

Complaints againſt the King's declaration. Carte v. 2. 220.

The King's declaration for the ſettlement of Ireland, though intended to provide for all intereſts, did not ſatisfy all parties. The adventurers and Cromwellian ſoldiers had indeed all that they could aſk granted them therein; but the officers who ſerved before 1649, and whoſe loyalty only had hindered their being paid in the time of the uſurpation, were treated with great inequality, with regard as well to the quantity of their debt (a proviſion being only made for the proportion of 12s. 6d. in the pound) as the ſecurity aſſigned to them, which was not likely to hold out to anſwer even that proportion. Whatever reaſon they had to complain, their duty and affection to the King made them declare themſelves ready to be concluded by his Majeſty's pleaſure. But the Iriſh were more clamorous; and thoſe who were entitled to the benefit of the articles of the peace in 1648 thought it very ſevere treatment, that their reſtitution ſhould be poſtponed till reprizals were found out and aſſigned to the adventurers and ſoldiers who had got poſſeſſion of their eſtates. They complained ſtill more heavily againſt the inſtruction given to thoſe commiſſioners, in which the qualifications for innocency were made ſo very ſtrict.

Reaſon of one ſevere mark of delinquency.

One of thoſe marks of delinquency, viz. enjoying their eſtates in the rebels quarters, was certainly rigorous; but the reaſon upon which it was grounded was, that the rebellion being almoſt twenty years before, and the Iriſh having,

Digitized by Google

having, it was ſuppoſed murdered all the Engliſh, or driven them away, it was not poſſible to procure, at that diſtance of time, witneſſes to prove particular acts of rebellion againſt moſt of thoſe who were therein concerned.

Proceedings of the commiſſioners ineffectual. Carte v. 2. 221.

The commiſſioners for executing the declaration ſat at Dublin, and publiſhed proclamations, requiring all adventurers, &c. within forty days to bring in the particulars of their eſtates, and all perſons to enter their claims before the firſt of May. But very little was done in theſe reſpects, for want of a law to warrant the proceedings of the commiſſioners; and the judges having declared their opinion, that the declaration, being only an act of ſtate, was no warrantable rule to walk by in the diſpoſing of mens eſtates, very few or none of the Iriſh entered their claims.

Act of ſettlement.

In order therefore to remove ſome objections to the King's declaration, and carry it into legal execution, the famous act of ſettlement, 14 and 15 Car. II. was made, of which it will be neceſſary to give an abſtract of the general clauſes, with ſome obſervations and points adjudged thereon.

Lands and tenements, &c. ſeized or ſequeſtered from and after 23 Oct. 1641, &c.

And by this act all manors, caſtles, houſes, lands, &c. which at any time from and after the 23d day of October 1641, were ſeized or ſequeſtered into the hands of, or to the uſe of King Charles I. or II. or otherwiſe diſpoſed of, or ſet out to any perſon or perſons, uſe or uſes, for adventurers, arrears, reprizals, or otherwiſe, whereof King Charles I. or II. or any * adventurer, ſoldier, reprizable perſon

* Theſe ſoldiers and adventurers were obliged to claim in order to diveſt the lands which by the veſting clauſe were in the King; which is plain from the two

Digitized by Google

ſon or others, reſpectively, had and received the rents and profits, by reaſon or upon account of the rebellion or war; or whereof the adventurers, officers and ſoldiers then or formerly of the Engliſh army in this kingdom, or † tranſplanted or tranſplantable perſons, their heirs or aſſigns, or any other perſon whatſoever, upon account of the ſaid rebellion or war, were in ſeiſin or poſſeſſion, on the 7th day of May 1659; on which were ſet apart or reſerved, towards the ſatisfaction of any the ſaid adventurers, ſoldiers, or other perſons, in conſideration of any money or proviſions advanced or furniſhed, or for arrears of pay, or in compenſation of any ſervice or other account whatſoever, or reſerved in order to a reprizal for ſuch incumbrances as were or ſhould be adjudged to any perſons out of the ſaid lands, or for any other purpoſe whatſoever; or whereof any *cuſtodiam*, leaſe for years, or other grant whatſoever, had been made; or unto which the King's father, or himſelf were then anywiſe entitled, upon account of the ſaid rebellion or war; or which were then wrongfully detained or concealed by any perſons whatſoever; as alſo

clauſes of making out certificates; for by theſe, the commiſſioners were empowered to make out their certificates according to every man's intereſt; and on ſuch certificates the chief governors, *&c.* were to order letters patent; ſo that the ſoldier and adventurer being to begin a title from the King, was to make out his right before the commiſſioners, and the patent was to be granted not in the uſual way, where it was *ex gratia* by letters from the King, and *fiat* to the chancellor; but this was to be *ex debito juſtitiæ*, and founded only on the certificate of the commiſſioners, without any order from the King. Gilb. rep. 242.

† Tranſplanters were ſeveral Iriſh proprietors of the popiſh religion, who, by the late uſurping powers during the diſorder of the times, were diſpoſſeſſed of their eſtates, merely for being papiſts; and many of theſe, having afterwards ſued out decrees, were put in poſſeſſion of lands in the province of Conaught and county of Clare, in compenſation of their former eſtates. Now, in the recital or preamble of the act of ſettlement, it is ſaid, that tho', as theſe decrees were acts of their own, they might without any injuſtice be denied relief, yet they are reſtored ſubject to the proviſoes and conditions therein mentioned.

all

Digitized by Google

all chantries, and all manors, lands, rents, tithes, penſions and other hereditaments whatſoever to them belonging, which were in the ſeiſin or poſſeſſion of, and out of which any rent or duty was reſerved, by any, who by the qualifications of the act ſhould not be adjudged innocent perſons; as alſo all lands and tenements belonging to any eccleſiaſtical perſons in their politick capacity, and that had formerly by them been let in fee farm, the right whereof was in any perſons who ſhould be not adjudged innocent; as alſo all leaſes that had been made by any eccleſiaſtical perſons of any lands or tenements belonging unto them in their politick capacity, or to any perſons who ſhould not be adjudged innocent, were adjudged and declared, as from the ſaid 23d day of October 1641, forfeited to the King his heirs and ſucceſſors; and were from that time veſted and ſettled in the real and actual poſſeſſion of him his heirs and ſucceſſors; without any office or inquiſition thereafter to be found *; notwithſtanding the former proprietors or reputed proprietors of the ſaid eſtates, or any of them, were not attainted for the ſaid rebellion or war.

Declared forfeited from 23 Oct. 1641.

But it is declared that the act ſhould not extend to the avoiding of any conveyance or diſpoſition of forfeited lands, &c. made ſince the 23d day of October 1641, by any proteſtant adventurer, or ſoldier, or other perſon, of or from ſuch perſons whoſe eſtates, if they had not ſo diſ-

Not to extend to conveyances by proteſtants, adventurers or ſoldiers, &c.

* The *non obſtante* in the cloſe of this ſection was by the Iriſh popiſh proprietors thought ſevere; but in anſwer to this it was ſaid, that if there were no attainder of the Iriſh, it was in favour to them; that ſo they might not be corrupted in blood, but left capable to inherit or purchaſe afterwards; and that the complaint had been much more juſt if they had been attainted by act of parliament, without further proceſs, as had been done in leſſer rebellions. Rep. of ſir Hen. Finch. Carte v. 2. app. 76.

Digitized by Google

poſed of them, would have been confirmed to them by the rules in the act limited.

Nor to perſons tranſplanted to the province of Conaught or county of Clare.

Nor to the avoiding of any contract for lands in Conaught or Clare, ſet out by decrees, made by proteſtants or others that purchaſed any lands from the perſons tranſplanted thither; nor to entitle the King to the mean profits of any of the ſaid forfeited lands, ſince the day aforeſaid ſet out to any adventurers, ſoldiers, or perſons tranſplanted into the ſaid province or county; or let by the late uſurpers for yearly rents, or granted by them, and confirmed by the King's declaration aforeſaid, and by the act; other than ſuch of the ſaid rents then in arrear and unpaid, and other than forfeited lands concealed.

Nor to lands belonging to the college of Dublin, or to the church, or to any corporation, or to ſome particular perſons therein named.

Nor to be conſtrued to forfeit and veſt in the King any honours, manors, lands, *&c.* on the 23d day of October 1641, belonging to the univerſity of Dublin; or to any archbiſhop, biſhop, dean, prebend, dean and chapter, or other eccleſiaſtical perſons in their politick capacity; or any other college, hoſpital, church collegiate or parochial; or to the church wardens and pariſhioners of any pariſh church for the uſes thereof; or to any guild, corporation or fraternity; or to any parſon, rector or vicar of any pariſh church; or to ſome particular perſons therein named.

Nor to innocent proteſtants.

Nor to veſt in the King, or take away any eſtate, right, *&c.* from any * proteſtants, their heirs, executors, adminiſ-

* Theſe innocent proteſtants and papiſts were likewiſe obliged to claim in purſuance of the act, becauſe they were obliged to make out the qualification of innocence; but when they made that appear, they were not enforced to take out any new patents, becauſe they were not to begin any new title from the King, but were remitted to their old title to ſuch lands as they claimed; and the lands came out of the Crown, not by any patent, or new grant, but by the diveſting clauſe in the act. Gilb. rep.

trators

Digitized by Google

trators or aſſigns, who did not join with the ſaid rebels before the 15th day of September 1643, whereof upon the ſaid 23d day of October 1641, they were ſeized or poſſeſſed or entitled; (other than ſuch eſtate as they were ſeized or poſſeſſed of, to the uſe of the ſaid rebels) nor to any judgment or decree obtained by them in the late courts of claims, or in any of the four courts in Dublin; or for which any judgment or decree ſhould be confirmed or made by the commiſſioners appointed by the King for the execution of his ſaid declaration and inſtructions.

Nor to any eſtate, right, &c. of any innocent papiſt, or their innocent heirs, executors, adminiſtrators or aſſigns. — Nor to innocent papiſts, &c.

All perſons their executors, adminiſtrators, and aſſigns, to whom any lands belonging to ſuch proteſtant or innocent papiſt had been aſſigned or diſtributed, to be firſt reprized before any other. — Perſons to whom lands of innocent proteſtants or papiſts were aſſigned, firſt to be reprized.

All the manors, lands, &c. ſo veſted and ſettled in the King, (except before excepted or provided for as aforeſaid) to remain to the King, his heirs and ſucceſſors, to the intent to be ſettled, confirmed, reſtored, or diſpoſed to ſuch uſes, and in ſuch manner, as in and by the ſaid declaration and inſtructions and by the act are declared and appointed; and the ſaid declaration and inſtructions are thereby, with the additions and alterations thereby made, ratified and confirmed. — To remain in the King to the uſes declared by the declaration & inſtructions.

And the manors, lands, tenements and rents whereof any archbiſhop, biſhop, dean, dean and chapter or any other eccleſiaſtical perſons whatſoever, in their politick capacity, were actually ſeized, or poſſeſſed in the year 1641, — Eccleſiaſtical perſons reſtored.

Digitized by Google

1641, and through the fury of the times had been diſpoſſeſſed, were to be forthwith reſtored, and delivered into their quiet and peaceable poſſeſſion.

Saving rights of others.

Saving the rights of all others (other than ſuch perſons who ſhould not be adjudged innocent papiſts) by this act.

Leaſes for years by biſhops, &c. forfeited, given to their reſpective ſees.

And leaſes granted for any certain term of years unexpired, by any archbiſhop, &c. or any other eccleſiaſtical perſons, of any lands to them belonging, and which were by the act forfeited or veſted in the King, are for the remainder of the term unexpired of ſuch leaſes, given and confirmed unto the reſpective ſees or bodies politick to whom the reverſions belonged; except they lay within the ſecurity of the 49 officers; and except all forfeited leaſes, that exceeded the term of 60 years, of any chantry lands or houſes lying within the ſecurity of the ſaid officers, and which were not ſurrendered nor ſentenced to be ſurrendered to the church in or before the years 1640 or 1641; the remainder of ſuch term unexpired being eſteemed part of the ſecurity of the ſaid officers.

Church lands granted in fee farm, and forfeited, to be allotted by way of augmentation to ſeveral archbiſhops, biſhops, &c. to Trinity college.

And out of the lands belonging to any archbiſhop, biſhop, &c. or other eccleſiaſtical perſons, which had been granted in fee farm, and were by the act forfeited and veſted in the King, ſeveral yearly ſums were to be allotted and ſet out for the better ſupport and maintenance of ſeveral archbiſhops and biſhops therein named, and their ſucceſſors, for ever. And to the provoſt of Trinity college, near Dublin, (out of the forfeited lands in the archbiſhoprick of Dublin) and his ſucceſſors for ever £300 per annum.

And

Digitized by Google

Impropriations or impropriate tithes forfeited to be ſettled on incumbents and their ſucceſſors, where the ſame are or do ariſe.

And all impropriations or appropriate tithes forfeited or veſted in the King, his heirs and ſucceſſors, by this act, or otherwiſe forfeited and eſcheated to him in right of the Crown (if there were no leaſes thereof in being unforfeited, or as ſoon as ſuch leaſes ſhould expire, or be otherwiſe determined) are thereby given to the church for ever, and ſettled upon the incumbents and their ſucceſſors, having the actual cure of ſouls in thoſe pariſhes where ſuch impropriations were, and ſuch impropriate tithes did ariſe; reſerving ſuch portion thereof to be ſettled upon the vicars and choir-men of each cathedral church for the increaſe of their maintenance, as the Lieutenant, &c. and council ſhould think fit; they the ſaid incumbents and their ſucceſſors paying to the King, his heirs and ſucceſſors, ſuch rents and duties as were formerly paid for the ſame, with ſuch increaſe of rents as by the ſaid Lord Lieutenant and council ſhould be adjudged reaſonable; or from the expiration of the ſaid unforfeited leaſes reſpectively *.

* For the explanation of the ſeveral clauſes relating to impropriations it is to be obſerved, that although the granting words are as full as the clauſes about augmentations and the college, yet the ſeveral biſhops of the dioceſes where thoſe impropriate tithes lay thought it adviſable to paſs patents for them in truſt for their clergy; upon which, and not before, the ſeveral incumbents enjoyed the ſame as ſoon as the old leaſes from the Crown expired.

Several rectories being appropriate to religious houſes, they ſo continued until the diſſolution, and then they came by the King's grant into lay hands, or continued in the Crown, who made long leaſes of them to ſeveral perſons. Now, ſuch as were the inheritance of the ſubject, and were forfeited by this rebellion, the King gives abſolutely by the act to him who had the vicarage, as an augmentation of his living: and ſuch as were in leaſe to proteſtants, or unforfeiting perſons, he grants likewiſe to the vicars, or thoſe who had the cure; and ſoon after the expiration of the unforfeited leaſes, the Duke of Ormond had many of theſe leaſes; but as ſoon as they were expired they came to the clergy, their biſhops having before paſſed patents for the uſe of their clergy.

Provided

Digitized by Google

Lord Lieutenant, &c. or the lords presidents of Munster and Conaught not to be prejudiced as to any impropriate rectories, &c.

Provided that nothing in the act should extend to the disposing or altering of any impropriate rectories or tithes, or rents, enjoyed by, or settled on the Lord Lieutenant, &c. or enjoyed by the lords presidents of Munster and Conaught in right of their places.

Saving for port-corn.

And that the Lord Chief Justice of the King's bench, and Lord Chief Baron of the Exchequer, and master of the rolls, or any other of the King's officers, should and might have and receive such ‡ port-corn of the several rectories which formerly had been paid and reserved.

Lord Lieutenant or other Chief, &c. to allot recompense to restorable persons for their rectories impropriate annexed to churches.

The Lord Lieutenant, &c. to allot such persons (who by the rules of this act should be restored unto the said rectories impropriate, in case no such annexation should be made) such recompense out of the same impropriations as should be thought fit.

Adventurers, to payone &c. year's profit of their land to the King.

All adventurers, their heirs and assigns, and all other persons claiming to have any lands or tenements as original adventurers, or under adventurers, were to pay to the King one full year's value of the profits issuing out of the lands possessed and enjoyed as aforesaid, to be paid by two equal payments within the space of two years. And all soldiers, their heirs or assigns, or any claiming under them, were to pay an half year's value of the profits issuing out of the lands possessed and enjoyed by them, in satisfaction of arrears, to be paid at one entire payment.

Erasmus Smyth, Esq; the lands settled on him for any pious uses exempted from such payment.

Provided that all lands settled or conveyed before the first day of May, 1662, on Erasmus Smyth, Esq; for any pious or other charitable use, should be exempted from paying the year's rent herein before imposed §.

‡ For port-corn see chap. 4.

And

§ This Erasmus Smyth was a considerable adventurer, and concerned in the adventures upon the *doubling ordinance* in 1643, by which all they who adventured money

Digitized by Google

And forfeited leaſes of any meſſuages or lands not exceeding 31 years or three lives, from the 20th day of October, 1641, the immediate reverſion, &c. whereof belonged to any innocent proteſtant or papiſt, might be granted by the Lord Lieutenant, &c. unto ſuch innocent reverſioners, who by virtue thereof ſhould hold and enjoy the ſaid leaſes againſt the King, his heirs and ſucceſſors, and all other perſons.

Reſidue of forfeited leaſes for 31 years or three lives, where the immediate reverſion was in an innocent proteſtant or papiſt, might be granted by the Lord Lieutenant to ſuch reverſioner.

Provided that no undiſpoſed or unconfirmed lands in the province of Ulſter, which had come, or ſhould come to the King's hands, ſhould be ſet out in ſatisfaction of deficient adventurers; but that the ſame ſhould be wholly reſerved and diſpoſed of for repriſal according to the full value and worth; unleſs the forfeited lands in other provinces ſhould not be found ſufficient to ſatisfy theſe deficiencies.

Lands in Ulſter to be reſerved for repriſals.

money on pretence of carrying on the war in Ireland (though it really was for the uſe of the parliament in England againſt the King) were to have double ſatisfaction in lands in Ireland. Now tho' by this act theſe adventurers were only to have ſatisfaction for the ſums they really paid, yet they had ſo much favour ſhown them, that they might apply the deficiencies of ſoldiers or adventurers to the overplus, and ſo continue their poſſeſſion. This Eraſmus Smyth, then being an old batchelor, made the then Duke of York believe that he ſhould have the remainder of all his fortune in caſe he died without iſſue, and there being then little probability of his having iſſue, the Duke became agent for him, and got him all the favour poſſible in the act of ſettlement. But the pretence was, that ſeveral publick pious uſes ſhould be performed by the ſaid Eraſmus Smyth after he had paſſed patent of his eſtate, which was valued at four or five thouſand a year. The Duke required him to ſettle the eſtate according to his promiſe, which with much ado he ſettled on the Duke in failure of iſſue of himſelf, and at the ſame time founded a ſchool in Tipperary, another in Drogheda, and a third at Galway, all which were far ſhort of the value of what he propoſed to ſettle to pious uſes; however he was connived at for the reaſons before-mentioned; but he afterwards married and had ſeveral ſons, and his deſcendants have ever ſince enjoyed the eſtate, ſo that the Duke of York was diſappointed, and the intended pious uſes not executed.

Digitized by Google

Lands granted by the King, &c. to ſtand charged with ſuch rents as the lands of adventurers and ſoldiers.

And it was enacted that all the lands in Ireland granted by the King under his great ſeal of England or Ireland, and any way ratified by the act, ſhould ſtand charged with a year's rent, or a year and an half's rent, and ſuch other like quit rents and annual payments wherewith any the lands of adventurers or ſoldiers ſtood charged, to be raiſed, levied, and paid as other the like rents and payments by the act are appointed to be paid.

Where greater rent was reſerved in the patent than the quit rent would amount to then ſuch rent to be paid, and no other quit rent.

Provided that where a greater rent was reſerved upon any ſuch grants and letters patent than the quit rents reſerved by this act would amount to, then the rent reſerved by the letters patent ſhall be duly paid, and no other quit rents; ſaving to the King, his heirs and ſucceſſors, all right and title to any manors, lands, &c. which he or his father had on the 22d day of October, 1641, in right of his Crown of Ireland; and which were then, or at any time within ten years before, in charge in the Exchequer, (otherwiſe than by inquiſition of lands in Conaught found and returned in the time of the Earl of Strafford's government) and which were not ſince diſpoſed by the King, or his father, by letters patent under the great ſeal of England or Ireland; and other than ſuch rights and titles as in and by a certain act of parliament paſſed in England, entitled, An act of free and general pardon, indemnity, and oblivion, were mentioned or intended to be barred or extinguiſhed.

Eſtates of papiſts, reſtorable, to be charged with an half year's, if they took no lands in

And the Lord Lieutenant, &c. and council were empowered to charge, for the uſe of the King, the eſtates of papiſts reſtorable by the act, not exceeding the proportions following, viz. all papiſts who took no lands in Conaught, one half year's value, and ſuch as took lands

Digitized by Google

lands in Conaught, one year's value of the eſtates unto which they were or ſhould be reſtored; to be paid into the receipt of the Exchequer for the ſatisfying unreſtored perſons for want of repriſals; or for the purchaſing of repriſals, adventures, arrears, incumbrances, or other allowed intereſts by this act, from ſuch as ſhould be willing to ſell their rights; whereby the land deſigned for repriſals might the better hold out to anſwer the ends of the King's declaration.

Conaught, and with a year's value if they took lands there, to enlarge the fund for repriſals.

The act of ſettlement was far from giving ſatisfaction to all parties; it was much complained of by the Iriſh, and by none more juſtly than the 49 officers, whoſe merits did not admit of a diſpute, and who were the only perſons that could in ſtrict juſtice demand the payment of their arrears. They were many of them ancient inhabitants of the kingdom, and of the moſt conſiderable and beſt intereſted perſons therein; had loſt great eſtates by the rebellion, and had diſtinguiſhed themſelves by their loyalty. Notwithſtanding which ſeveral grants and proviſoes had been obtained from the King, and inſerted in the act, which intrenched upon the ſecurity allotted for the payment of their arrears.

Act of ſettlement not ſatisfactory, Carte, v. 258.

A bill of explanation was prepared by the Lord Lieutenant and council, and ſent over to England in September, 1663; the purport of which was to explain the King's meaning in ſome clauſes in his declaration, to aſſign a better ſecurity to the 49 officers, to prevent the reſtitution of the Iriſh to lands and houſes in corporations, (which was done for reaſons of ſtate, upon a repreſentation from the commiſſioners of the multitudes ſo reſtored) to take away a ſixth part of the ſoldiers and adventurers lands, and thereby to increaſe the ſtock of repriſals, and to make proviſion for

Bill of explanation ſent from Ireland, and its purport, Carte, v. 296.

Digitized by Google

ſome eminent perſons who were cut off from all manner of relief by the power of the court of claims being determined. There had been four thouſand claims of innocency entered in that court, yet they had not time to hear ſix hundred of them at the day their commiſſion ended. The claims of all innocents that had been tranſplanted into Conaught were, by the commiſſioners inſtructions, not to be heard till thoſe of innocents who had no land were firſt adjudged; ſo that not one of them had been heard. There was in the bill ſomething done for theſe, and for the people of all ſorts, towards their ſecurity and ſettlement, beyond what was done by virtue of the former act. To increaſe the ſtock of repriſals, the want of which was the great obſtruction of the ſettlement, there was a clauſe inſerted for reſuming into the King's hands all eſtates which had been obtained by bribery, forgery, perjury, ſubornation, falſe admeaſurement, and other undue means, or were enjoyed by perſons that had by any overt act oppoſed his majeſty's reſtoration, or had ſince endeavoured the diſturbance of the publick peace.

Objections made to it.

But ſeveral objections being made on all ſides to the bill, all parties grew weary of the unſettled condition in which they found themſelves, and grew diſpoſed to relax ſomething of their ſeveral pretenſions. To this diſpoſition in different intereſts there were other conſiderations which ſeemed to render a general agreement practicable. Upon examination of the pretended acts and ordinances of the late times, and the ſeveral books of ſubſcriptions, and the times when they were made, it was diſcovered that one entire moiety of the adventurers money was ſubſcribed and paid after the *doubling ordinance*, and conſequently half of the lands ſet out to them ought to be retrenched, they being to receive only ſimple ſatisfaction for ſuch money as they

Digitized by Google

they really and *bona fide* advanced. And yet the adventurers who demanded repriſals were moſt of this ſort.

Abuſes diſcovered in the manner of ſetting out the ſatisfaction of the adventurers.

There were likewiſe groſs abuſes diſcovered in the manner of ſetting out the adventurers ſatisfaction; for they had whole baronies ſet out to them in groſs, and then they employed ſurveyors of their own to make their admeaſurements; and thoſe finiſhed, they had never ſince brought in their ſurveys or field books into the Surveyor general's office, or to publick view. Thus they had admeaſured what proportions they thought fit to mete out to themſelves; and what lands they were pleaſed to call unprofitable they had returned as ſuch, let them be ever ſo good and profitable. In the moiety of the ten counties, wherein the ſatisfaction of the adventurers was ſet out, there were 245,207 acres ſo returned. Several perſons, in caſe the King would grant them fee farms of all thoſe lands held as unprofitable in five of thoſe counties, offered to give an higher rate for them, one with another, than was paid him in quit rents for the profitable; and it was probable that others would do the like in the other five counties. The lands held by the ſoldiers as unprofitable, and returned as ſuch into the Surveyor's office, amounted to 665,670 acres, as appeared by a particular recital thereof in the certificates of the proper officers.

Beſides the deductions to be made on this account, if the lands both of the adventurers and ſoldiers were reduced, as they ought, to Engliſh meaſure, according to the acts, above 500,000 profitable acres would be ſaved to his Majeſty for a fund of repriſals.

When

Digitized by Google

Propoſals of the Iriſh Roman Catholicks, Carte, v. 2, 302.

When the bill of explanation was taken into conſideration in England, propoſals were made by the agents for the ſeveral intereſts. The Roman Catholicks, beſides a repeal of the Engliſh acts of 17 and 18 Car. I. and all attainders ſince October, 1641, and the eſtabliſhment of the Down admeaſurements, and Earl of Strafford's ſurvey, the confirmation of all the decrees of the court of claims, and ſatisfaction to poſſeſſors for improvements, propoſed that all the lands belonging to the Roman Catholicks in 1641 ſhould be veſted in his Majeſty, who thereout ſhould aſſign 1,000,000 acres of profitable lands, plantation meaſure, to the adventurers and ſoldiers, in full ſatisfaction of all their pretences to lands for adventures or arrears; to the 49 officers their ſecurity, if it did not exceed their demand; to innocents adjudged by the court of claims, the lands decreed them; and the reſt to be ſet out for ſatisfaction of publick debts, proviſions, &c. before the ceſſation, and to provide for the nominees not already reſtored, in ſuch proportions as his Majeſty ſhould think fit, till after the ſubdiviſion and diſtribution of the reſt among the ſeveral intereſts; and then one moiety thereof to be applied for the benefit of ſuch proteſtants, intended to be provided for in the ſettlement, as ſhould by the alterations thereof be moſt prejudiced in their reſpective ſatisfactions, in ſuch proportions as his Majeſty ſhould think fit; the other to be diſtributed to ſuch of the Roman Catholicks as ſhould be the greateſt ſufferers by the ſaid alteration. Theſe moieties were to be taken reſpectively out of the lands aſſigned to the Iriſh and Engliſh by the act of ſettlement; each party ſupplying what was to be diſtributed to the ſufferers of their denomination. They propoſed likewiſe to advance his Majeſty's revenue by quit rents and fines

Digitized by Google

fines payable out of lands to the ſum of £200,000 a year; to which all the other intereſts readily agreed.

Propoſals of ſoldiers the and adventurers, Carte. v. 2. 303.

The ſoldiers deſired that the Earl of Strafford's ſurvey, and Sir William Petty's, might be compared and adjuſted, ſo as to form thence an authentick rule and ſtandard, whereby to know the proprietors quantities, qualities, and values of the lands; and that all the lands whereof the Roman Catholicks were poſſeſſed in 1641 being veſted in the King, two fifths might be reſtored to them, and the other three fifths diſtributed among the ſeveral Engliſh intereſts. The adventurers complaining that they had loſt above 200,000, acres by the decrees of the court of claims, deſired that the reſt of their ſecurity might be continued to them. But theſe propoſals being oppoſed by the Iriſh, all the Engliſh intereſts agreed in making another, viz. that all the decrees and ſettlements already made to the Iriſh ſhould be confirmed to them, as fully as they were decreed, unleſs the Iriſh deſired a review; and that 400,000 acres more ſhould be ſet a part for nominees, but all the reſt of the lands veſted in the King to be continued and diſtributed among the ſeveral Engliſh intereſts. The Iriſh objected to the uncertainty of this propoſal, as not mentioning where the 400,000 acres were to be ſet out, and as being very far ſhort of giving ſatisfaction to many hundreds of innocents yet unheard, whoſe rights were ſaved by the act of ſettlement, as well as to the nominees; computing this deficiency at 170,000 acres, with regard to tranſplanted perſons in Conaught, beſides what would be requiſite toſatisfy other perſons provided for in the former act, but yet unreſtored. This gave occaſion to various computa-

tions

Digitized by Google

tions and diſputes about the materials and ſtock for repriſals; and to leſſen the uncertainty and difficulty of that matter, the adventurers and ſoldiers conſented to be repriſed in quantity of acres only, and not in value, worth, and purchaſe.

Final agreement of the parties, Carte, v. 2. 303.

The Roman Catholicks at laſt to end all diſputes propoſed, that if, for the ſatisfaction of their intereſts, the adventurers and ſoldiers would part with one third of the lands reſpectively enjoyed by them on May 7th 1659, in conſideration of their adventures and ſervice, they were ready to agree to it; this propoſal was in fine accepted, and one third of all the King's grants (except thoſe made to the Duke of York, and ſome others) being likewiſe retrenched, all matters of any conſequence were thereby adjuſted.

And bill of explanation agreeable thereto, Carte v. 2. 304.

Thus was the ſettlement at laſt effected by the common conſent of all the ſeveral intereſts concerned; and in conſequence thereof the Engliſh council, on May 18th 1665, ordered that the adventurers and ſoldiers ſhould have two thirds of the lands whereof they ſtood poſſeſſed on May 7th 1659, that the Conaught purchaſers ſhould have two thirds of what was in their poſſeſſion in September 1663, that what any perſon wanted of his two thirds ſhould be ſupplied, and whatever he had more ſhould be taken from him; that the adventurers and ſoldiers ſhould make their election where the overplus ſhould be retrenched; and the 49 men ſhould be entirely eſtabliſhed in their preſent poſſeſſions. And upon theſe reſolutions the act of 17 and 18 Car. II. ſeſs. 5. ch. 2. or act of explanation of the act of ſettlement, was drawn up and received the royal aſſent.

And

Digitized by Google

And by this act the lands, tenements, hereditaments, &c. vested in the King by the act of settlement, are declared to be vested in him freed and discharged from all estates tail, and from all conveyances made before the 23d of October 1641, by any tenant in tail, and from all titles and estates derived by, from, or under such conveyance, and from all remainders, reversions, rights, titles, interests, &c. to be disposed of and settled to the uses limited and declared by that and the present act.

Lands, &c. vested in the King by the act of settlement discharged from estates tail, &c.

And it is thereby declared that no person, who by the qualifications in the former act had not been adjudged innocent, should be thereafter adjudged innocent, so as to claim any lands, &c. but should be for ever barred and excluded from all claims, &c.

Persons not already adjudged innocent barred.

And it is enacted that the adventurers and soldiers who on the 7th of May 1659, were seized or possessed of any lands, &c. towards the satisfaction of adventures or arrears, and all deficient adventurers should hold, and enjoy, and be settled in so much of the forfeited lands vested in his Majesty, as should amount to two thirds of what they had, or ought to have had, on the 7th of May 1659, to be computed by Irish measure, according to the Down survey, where the Down survey had been taken, and where the Down survey had not been taken, by the Strafford survey, or by some other survey to be taken; wherein the unprofitable land should be cast in together with the profitable; which two thirds should be held

Adventurers, and soldiers, &c. to be confirmed in two thirds.

Digitized by Google

and enjoyed by them, in full ſatisfaction of any right or claim they might have by virtue of the former act.

Adventurers, ſoldiers, &c. to be repriſed two thirds, before diſpoſſeſſed.

And no adventurer, ſoldier, forty nine officer, or proteſtant purchaſer, in Conaught, or Clare, before the 1ſt of September 1663, in poſſeſſion of lands reſtorable was to be removed until he ſhould have as much other forfeited lands ſet out to him, as ſhould amount to two thirds of the lands ſo to be reſtored.

Directions to be obſerved when the adventurer, ſoldier, &c. was in poſſeſſion of more or leſs than his two thirds.

And in order that there might be as little change or alteration of poſſeſſion as ſhould be conſiſtent with the end of the act, it was directed that where any adventurer or ſoldier ſhould be found to have in his poſſeſſion more lands undecreed away, than his two thirds ſhould amount to, he might continue poſſeſſion of ſo much as the commiſſioners ſhould adjudge his two thirds to amount to, and the overplus to be cut off at his or their election. And the like rule to be obſerved in the retrenchment to be made from the proteſtant purchaſers in Conaught, and Clare. And where any adventurer or ſoldier ſhould be found to be poſſeſſed of leſs land than his or their two thirds ſhould amount to, that then he might continue in poſſeſſion of what he had, and the reſidue to be ſet out and made up of other forfeited land, to be allotted and ſet out as near as might be to the lands in his poſſeſſion.

All deficient adventurers to be ſatisfied in the ſame barony or County.

And it was further directed that all deficient adventurers, who were to be ſatisfied for two thirds of ſuch their deficiencies, and all the adventurers, ſoldiers, and proteſtant purchaſers in Conaught, and Clare, to whom lands were to be ſet out for the making up their two thirds, ſhould

Digitized by Google

ſhould be ſatisfied in the ſame barony or county, or in the next neareſt in value, if it could be conveniently done.

Books to be made by the commiſſioners and returned into the Exchequer.

And the commiſſioners for execution of the act were thereby directed to cauſe books to be made, in which ſhould be entered the portions allotted to each adventurer, and ſoldier, &c. for their two third parts; and to return a duplicate thereof into the court of Exchequer, there to remain of record.

Patents to be granted upon certificates of the commiſſioners.

And upon a certificate under the hands and ſeals of the major part of the Commiſſioners, of the lands ſo allotted, with convenient deſcriptions and denominations thereof, and preſented to the Lord Lieutenant, &c. he the Lord Lieutenant, &c. was thereby authorized and required, to cauſe letters patent to be paſſed of ſuch lands, without any further letters or warrants from his Majeſty.

Where eſtate for life only recovered by an Iriſh claimant, the perſon againſt whom the decree, &c. might take the reverſion in fee or two thirds in other lands.

And where an eſtate for life only left in the perſon againſt whom decree, &c. might chooſe the ſame in ſatisfaction of one of the thirds.

And where the eſtate in any lands recovered by any Iriſh claimant, by any decree by this act confirmed, ſhould not be greater than for the life of ſuch claimant, the commiſſioners were to give the perſon againſt whom the decree ſhould be made his election to take the reverſion in fee of ſuch lands, expectant upon the determination of ſuch eſtate for life, in lieu of his full two thirds; or to have his full two thirds ſet out to him preſently out of ſome other forfeited lands. And where the eſtate ſo recovered by an Iriſh claimant ſhould be ſuch a remainder, or reverſion, as ſhould leave to the perſon againſt whom the decree ſhould be made an eſtate for the life of ſome other perſon only, the com-

Digitized by Google

miſſioners were to give the perſon againſt whom the decree ſhould be made his election to continue the poſſeſſion of the land during the life of ſuch perſon, in ſatisfaction of one of his third parts, together with an allotment of another third part, or to have his full two thirds ſet out to him out of ſome other forfeited lands.

Such letters patent confirmed againſt the King diſcharged of all eſtates, &c. not therein ſaved.

And all letters patent granted by virtue thereof are thereby confirmed unto the ſeveral perſons therein named, according to the eſtates therein granted, againſt the King, and all other perſons claiming by, from, or under him, diſcharged of all forfeitures for non-payment of money, or not putting in of claims, &c. and of all eſtates tail, and all other eſtates of freehold or inheritance, and all reverſions, remainders, titles and intereſts whatſoever, not decreed or already allowed, other than what were intended to be preſerved by this act, and ſhould be reſerved in the ſaid letters patent.

49 officers confirmed in lands not decreed away, &c.

And it is thereby further enacted, that the proteſtant officers ſerving before 1649, and not excluded by the former act, and who had received no lands or money for their pay due to them for their ſervice, ſhould hold and enjoy, and be continued and confirmed in all and ſingular the lands, &c. not already decreed away by the commiſſioners, and in the benefit ariſing from the redemption of mortgages, ſtatutes and judgments, &c.

Proteſtant purchaſers from tranſplanted perſons to hold two thirds.

And it is thereby enacted, that proteſtant purchaſers before 1ſt September 1663, from tranſplanted perſons in Conaught and Clare, ſhould hold and enjoy and be confirmed in two thirds thereof, to be allotted them by the commiſſioners, and to be entered in books and paſſed by letters patent, as in the caſe of adventurers and ſoldiers.

And

Digitized by Google

No perſons to be repriſed above two thirds.

And it is further enacted, that neither adventurer, ſoldier, 49 officer, proteſtant purchaſer in Conaught or Clare, tranſplanted perſon, or any other perſon, entitled to repriſal, ſhould be enabled to demand further than 2 full third parts.

All lands veſted in the King, or reſtored, ſubject to quit rent as in the former act.

And it is further enacted, that all lands by this or the former act veſted in the King, or reſtored by virtue of any decrees, or by virtue of any clauſe in this or the former act, and not particularly, by expreſs words, excepted from quit rents in the ſame clauſe, ſhould be ſubject and liable to ſuch quit rents, to be paid his Majeſty, as in the former act is directed *; ſaving only that the lands in the province of Ulſter, which by the former act were charged with one penny the acre quit rent, ſhould be theneeforth charged with two pence the acre quit rent.

Lands in Ulſter to two pence the acre.

Power given to the council to abate quit rents.

But a power is thereby given to the Lord Lieutenant and council, within the ſpace of three years, to make ſuch moderation or abatement of the quit rent as they ſhould think fit, where the quit rent ſhould be ſo near the value of the land as to diſcourage improvement, which order of council, enrolled in the Exchequer, is thereby made as effectual as if thereby enacted.

Decrees of innocency confirmed.

And decrees made by the commiſſioners under the former act, whereby any proteſtants had been declared innocent, are thereby confirmed. And † decrees whereby

* On this clauſe chiefly it was determined in this court, in the caſe of the King v. Dardis, Hill. 1667, that the eſtates of innocent papiſts ſhould be ſubject to quit rents.

† The decree of the commiſſioners could not reduce the eſtate of an innocent papiſt, ſo as to give him a leſs eſtate than what he had before, for the decree did not make a title to the innocent papiſt as it did to the adventurer or ſoldier. Gilb. rep. Kellet v. Mc. Carty Moore.

any

Digitized by Google

any papiſts had been declared innocent, and which ſhould be taken out within a certain time, are thereby likewiſe confirmed, with ſome exceptions and reſtrictions; but the perſons ſo declared innocent and reſtored are thereby debarred from ſuing for mean profits.

Decrees of innocency *quoad hoc*, not to entitle claimants to any other lands.

And whereas many perſons had put in their claims before the former commiſſioners, as innocent perſons, thereby demanding ſome ſmall parcel of land only, or deriving a title to ſome ſmall part from ſome Iriſh papiſt, and thereupon no oppoſition being made, the commiſſioners declared the claimant, or the perſon under whom the claimant derived, to be innocent *quoad hoc*; after which the claimants, *&c.* alleging themſelves to be declared innocent, entered upon great eſtates in ſeveral counties, as diveſted out of the Crown by ſuch judgment of innocence, whereas if the whole eſtates, to which the claimants pretended, had been then in queſtion before the commiſſioners, the adventurers and ſoldiers therein concerned would have been ſummoned, and might have produced proof of their nocency; it is therefore enacted, that no ſuch decree of innocency *quoad hoc* ſhould give ſuch perſon any title to enter upon or enjoy any other lands, than what were particularly mentioned in ſuch decree.

Innocents left to law, the proceedings againſt them.

And becauſe ſeveral perſons had been decreed innocent, but had nevertheleſs not been reſtored, but had been left to the courſe of * law for the recovery of their poſſeſſions, by trying their titles, it is thereby enacted, that the defend-

* This was where a papiſt was innocent, and pretended a title to land, and ſummoned the proprietor to appear before the commiſſioners, and the proprietor not only denied the innocence but likewiſe the title of the papiſt claiming the eſtate, there if his innocency was found, he was found innocent at large and left to the law to try his title to the eſtate.

ants

Digitized by Google

ants in ſuch claims ſhould within three months make their election, whether they would relinquiſh the poſſeſſion of the lands in controverſy to the King, and reſort to other forfeited lands for their two thirds, &c. or abide a trial at law; and if they ſhould elect a trial, and the Iriſh claimant ſhould fail to proſecute his title, or a verdict and judgment ſhould paſs againſt him, then the adventurer, ſoldier, &c. was to hold the land to him and his heirs; but if a verdict and judgment ſhould paſs for the claimant, or no ſuch election ſhould be made, then the adventurer, ſoldier, &c. was to be excluded from demanding his two thirds. But it is thereby directed that no other title ſhould be given in evidence by ſuch Iriſh claimant, but ſuch as was alleged in the claim exhibited before the commiſſioners.

Doubts ariſing to be explained by Lord Lieutenant and council.

And the act further directs, that in caſe of doubts or defects ariſing or appearing therein, the commiſſioners might, within two years next after their firſt ſetting, acquaint the Lord Lieutenant and council therewith, and that ſuch order of amendment or explanation as they ſhould make in writing, within the ſaid two years, and enrolled in Chancery, ſhould be as effectual as if it had been part of the act.

Reſolution of doubts by Lord Lieutenant and council.

Eſtates ſeized, ſequeſtered, &c. to be taken and adjudged forfeited to and veſted in his Majeſty, without further proof.

And in conſequence of the laſt mentioned clauſe in the foregoing act, and of certain doubts propoſed to them by the commiſſioners, they did by an order of council, bearing date 9 April 1666 and enrolled in the court of Chancery, order and declare, firſt, that all eſtates, &c. which did on the 23d of October 1641, or at any time ſince, belong to any Iriſh papiſt, or which had been returned by the civil ſurvey, or Down ſurvey, as belonging to any Iriſh papiſt, and which at any time after the 23d of October 1641 were ſeized,

Digitized by Google

ſeized, or ſequeſtered, or veſted in his Majeſty, upon account of the rebellion (excepting ſuch eſtates as had been decreed to innocents, and belonged to them on the 22d of October 1641, and excepting ſuch lands as had been reſtored to the former proprietors by ſome clauſe in either of thoſe acts, and excepting any lands for which ſome judgment or decree was had by a proteſtant in the late court, or pretended court of claims, or in any of the four courts, before the 22d day of Auguſt 1663) ſhould at all times thereafter in the four courts ſitting in Dublin, and in all courts of juſtice, and in all trials, actions and ſuits, both in law and equity, as well between his Majeſty and any of his ſubjects, as between party and party, without any further proof, be always conſtrued to have been ſeized, ſequeſtered, and from the 23d of October 1641 forfeited to his Majeſty, without any inquiſition or office found, &c.

After adjudication of any lands, &c. and after certificate and patent paſſed, the rights of all perſons, (except as herein are excepted) for ever concluded and barred.

And ſecondly, that after the commiſſioners for executing the ſaid acts ſhall have adjudged any of the ſaid lands, ſo veſted or forfeited to his Majeſty, to any perſon or perſons who by the ſaid acts are * entitled thereunto, and ſhall have granted their certificate accordingly, and letters patent ſhall be thereon paſſed, the rights, titles, and intereſts of all perſons whatſoever who had not been adjudged innocent, as well ſuch as were proteſtants as papiſts, ſhould be thereby concluded and barred for ever; other than ſuch rights and titles which ſhould be reſerved in the letters patent; and other than ſuch rights as are the proper act of the party, to whom ſuch letters patent ſhall be granted, or of thoſe under whom he claims as heir, executor, or adminiſtrator; and other than ſuch debts,

* By *the perſons entitled* muſt be underſtood perſons entitled by the act to receive certificates. Gilb. ante 216.

leaſes,

Digitized by Google

leaſes, and payments whereunto the ſame are by the ſaid acts made liable; and that the ſaid lands, &c. in the ſaid letters patent contained, ſhould be by the ſaid acts confirmed, according to the ſeveral eſtates thereby granted, againſt the King and all other perſons bodies politick and corporate.

What eſtate the adventurers and ſoldiers ſhall have in the lands ſo adjudged, &c.

And thirdly, that all adventurers and ſoldiers, their heirs and aſſigns, ſhould have and enjoy an eſtate of inheritance in fee ſimple in ſuch lands as ſhould be certified to belong to them; unleſs ſome leſſer eſtate ſhould be therein expreſsly limited; and that in caſe ſuch leſſer eſtate ſhould be ſo limited, the party ſhould be repriſed out of other lands, ſo as to make up his two third parts, by the ſaid acts intended to him, equal in worth and value to others who ſhould have eſtates in fee ſimple certified and granted to them.

Determinations relative to the queſtion whether eſtates of innocent papiſts were liable to quit rents.

Upon the conſtruction of theſe acts, a conſiderable queſtion aroſe, whether the eſtates of innocent papiſts reſtored were liable to quit rents. When the ſettlement of Ireland was under conſideration before King Char. II. previous to the paſſing the declaration, the Iriſh papiſts urged that they ſhould only hold by their old tenures, and pay their old rents; but the agents on the other ſide (amongſt whom was the earl of Orrery) inſiſted that as the rebellion was begun by the papiſts, whereby the King was ſo long deprived of his ancient revenue, the papiſts ought to contribute equally with the new intereſts for its future augmentation. After the declaration, and when the act of ſettlement was before the council, the papiſts again urged this point; but the commiſſioners from the lords juſtices anſwered that this matter had been ſettled by the declaration, and the former arguments were uſed in ſupport of

Digitized by Google

the charge, and the bill paſſed without alteration as to this point.

But when all the decrees of innocence were paſſed under the act of ſettlement, and the eſtates put in charge for the quit rents, it was made matter of doubt, whether under that act they were liable. And the point was brought under conſideration of the court of Exchequer in Eaſter term, 1665, in the caſe of the King againſt Gerald Dardis, which was as follows:

He, being charged for ſome lands in the county of Weſtmeath, came in and pleaded his decree of innocence; the Attorney general replied, that he would not proſecute further, and did not deny the lands being put out of charge, with a ſaving for the arrears before the 15th day of June, 1663; the court accordingly gave judgment of exoneration: And the lands of innocent papiſts were taken out of charge, and ſo continued until after the act of explanation *. When that act paſſed they were again put in charge; and the point came again into queſtion in Hillary term, 1667, in the caſe of the King againſt the ſame Gerald Dardis, as follows:

After praying oyer of the charge, Dardis pleaded, that before the charge, viz. 22d of October, 1641, he was ſeized of theſe lands in his demeſne as of fee; that being ſo ſeized, 1ſt of May, 1652, the lands were ſeized and ſequeſtered; he then pleaded the act of ſettlement, and the exception in favour of innocent papiſts; and his decree of innocency, and the former diſcharge, and the act of ex-

* Thoſe rents amounted at this time to £10,000, as appears by a letter of the Duke of Ormond to King Charles II. Carte, 2 vol. app. p. 87.

planation,

Digitized by Google

planation, confirming the decrees of innocency. The Attorney general replied, admitting the ſeveral matters ſo pleaded, that the clauſe in the act of explanation by which all lands veſted in the King by, or reſtored by virtue of, any decree, or by virtue of any clauſe in either act, and not particularly excepted from quit rents in the ſame clauſe, ſhould be liable to quit rents, and averred, that the lands in queſtion are not exempted by expreſs words, and that the rent in queſtion was a quit rent, according to the rule in the act of ſettlement. Dardis demurred; and the Attorney general joined in demurrer; and after many arguments, and great deliberation, the court gave judgment for the charge: for that the lands of innocent papiſts were veſted in the King, and reſtored by virtue of decrees, and thoſe decrees confirmed by the act of explanation, and conſequently they fell within that clauſe in the act which charges quit rents; and there are not in either act any expreſs words to exempt them, as there are with regard to innocent proteſtants.

Michaelmas term, 1670, ordered that the lands of innocent papiſts ſhould be put in charge.

And afterwards, Michaelmas term, 1670, upon motion made by John Temple, knight, ſetting forth, that in the roll tranſmitted by his Majeſty's late commiſſioners for executing the acts of ſettlement and explanation, for the charging the eſtates of innocent papiſts, there were many lands left out of charge, and others unduly charged with more acres than were in the Down ſurvey; and therefore deſiring that ſuch lands ſo omitted out of the roll, and included in the reſpective decrees of the ſaid innocent papiſts, might be brought in charge, by his Majeſty's Surveyor general, and that where any ſuch miſtakes ſhould be in the roll of innocency the ſame might in like manner be certified. It was ordered that his Majeſty's Auditor general ſhould, upon certificate of the Surveyor general, bring in

Digitized by Google

charge all ſuch lands ſo decreed to any innocent papiſt, and ſo omitted out of the ſaid roll in charge; and that he likewiſe, upon the like certificate from the Surveyor general, ſhould aſcertain where any miſtake ſhould be in the ſaid roll, ſo that his Majeſty's rents might be thereby aſcertained; whereof the Auditor general, Surveyor general, and all other officers of the court were to take notice.

Innocent proteſtants deriving under innocent papiſts liable to quit rent.

And on the 13th of December, 1673, in the caſe of the King againſt Malone, the queſtion being, whether an innocent proteſtant deriving under an innocent papiſt ſhould be liable to quit rent, the court were of opinion that he was, and gave judgment for the King.

By the ſtatutes of 10 Will. III. c. 7, 10 Will. III. c. 18, and 2 Ann, ſeſs. 1. c. 9. there are ſeveral proviſions made for quieting poſſeſſions under the acts of ſettlement and explanation, and barring ancient claims; but theſe acts, being now of little uſe, are not neceſſary to be inſerted here.

CHAP.

Digitized by Google

CHAP. XXII.

Of the FORFEITURES in this KINGDOM by the REBELLION in 1688.

The rebellion in 1688.

VERY ſhortly after their Majeſties, King William and Queen Mary, had accepted the Crown of theſe realms, which was on the 13th of February, 1688, a rebellion broke out in this kingdom in favour of the late King James II. encouraged and aſſiſted by the French King; which, after it had raged for near three years, was quelled, and the Iriſh reduced to obedience, at the expenſe of the people of England; for which reaſon, and as the forfeitures were very conſiderable, (many perſons of this kingdom of large properties having been engaged in the rebellion) the parliament of England, notwithſtanding the royal prerogative, and the right claimed by the Crown to the diſpoſal of theſe forfeitures, took upon them to diſpoſe of them as they thought fit; and even to re-aſſume almoſt all the grants which the Crown, in virtue of this prerogative and right, had made to ſeveral perſons of ſeveral of theſe forfeitures.

The ſtate of the forfeitures, and how diſpoſed of.

Now the ſtate of theſe forfeitures upon this rebellion, and the manner in which they were diſpoſed of, were as follows, as appears by a report made by the commiſſioners of the revenue to the lords juſtices the 3d day of June, 1693.

Soon

Digitized by Google

Commiſſion to the Earl of Longford and others.

Soon after the reduction of Ireland, their Majeſties granted a commiſſion to the Earl of Longford, and others, for ſeizing and ſecuring all forfeited goods, chattels, and eſtates, dated the 12th of July, 1690.

And repreſentation againſt it by the commiſſioners of the revenue.

Upon which the commiſſioners of the revenue, by their letter of the 17th of July, 1690, to Sir Robert Southwell, repreſented to his Majeſty that they were empowered by their commiſſion, as well as by particular directions of the lords of the treaſury, to take care of the forfeited eſtates and effects belonging to rebels in this kingdom; and that the management thereof by them, and their collectors, within their reſpective diſtricts, would be much more effectual and leſs chargeable than by others.

His Majeſty's order thereon, by which the commiſſioners of the ſeizures were to ſeize and to tranſmit to the commiſſioners of the revenue.

His Majeſty by his order of the 23d of July, 1690, ſignified his pleaſure, that the ſaid commiſſioners of ſeizures ſhould nevertheleſs continue to act by virtue of their commiſſion, but that all ſeizures that were made by them ſhould be tranſmitted to the commiſſioners of the revenue, to the end that ſuch forfeited goods as were periſhable might be diſpoſed of; and that the houſes and lands might be ſet for a year by the ſaid commiſſioners of the revenue; the produce thereof to be paid to their Majeſties receiver general.

And ſeveral returns accordingly tranſmitted by them to the commiſſioners of the revenue.

And purſuant to this order, and to a ſubſequent order of the lords juſtices, dated the 29th of September, 1690, the commiſſioners of ſeizures did tranſmit to the commiſſioners of the revenue the returns of lands and goods ſeized by their ſub-commiſſioners, contained in ſeveral ſchedules or liſts; which the commiſſioners of ſeizures certified to be true copies of the returns made to them by their

Digitized by Google

their ſub-commiſſioners. But this was not done till the months of October, November, December, 1689, and January, 1690, as appears by the dates of the ſeveral tranſmits ſigned by the commiſſioners of ſeizures.

Theſe ſchedules being ſo tranſmitted, the commiſſioners of the revenue cauſed ſuch of them as related to perſonal eſtates to be tranſcribed, and ſent to the ſeveral collectors in whoſe diſtricts ſuch perſonal eſtates were, with inſtructions, which were approved of by the lords juſtices, to them to demand and receive the goods, ſtock, &c. therein mentioned from the ſub-commiſſioners, (giving acquittances for the ſame) and alſo to diſpoſe of them, when received, as therein directed.

Who ſent ſuch as related to perſonal eſtates to the ſeveral collectors.

The commiſſioners of ſeizures being ſuperſeded by warrant under the great ſeal, dated the 6th day of February, 1690, it was then thought neceſſary for their Majeſties ſervice, that the original returns of the ſub-commiſſioners, then in the hands of the diſſolved commiſſioners, ſhould be lodged in the Chief remembrancer's office in the Exchequer, there to remain on record, as a check upon all ſuch perſons as had been concerned in the forfeitures; which was done accordingly.

The commiſſioners of ſeizures ſuperſeded, and the original returns of the ſeizures lodged in the Exchequer.

And purſuant to the before-mentioned inſtructions the ſeveral collectors demanded from the ſeveral ſub-commiſſioners the goods, corn, ſtock, &c. wherewith they were charged in their ſaid ſchedules, and made inventories of ſuch part thereof as they received; which, with the accounts of their proceedings from time to time, they returned to the commiſſioners of the revenue.

The collectors got the goods, &c. from the ſub-commiſſioners and returned inventories to the commiſſioners of the revenue.

But

Digitized by Google

Reaſons returned b the ſub-commiſſioners why but a ſmall part of the goods could be received.

But though the returns made by the ſub-commiſſioners were very large, and carried with them an appearance of conſiderable quantities of forfeited goods, &c. yet by the reaſons entered in the margins of the ſaid returns by the ſub-commiſſioners themſelves, it appeared that but a ſmall part of them could be expected to be received by the collectors; theſe reaſons ſetting forth that the goods ſpecified were either claimed by perſons under protection, or detained by proteſtant landlords for rent due to them from forfeited tenants, or were ſeized on and embezzled, or deſtroyed by the army.

The ſub-commiſſioners not accounting fairly for the goods, &c. perſonal interrogatories exhibited to them.

The commiſſioners of the revenue finding by the returns of their collectors, and by other informations, that there nevertheleſs remained with ſeveral of the ſub-commiſſioners conſiderable quantities of forfeited goods, ſtock, &c. which they ought to have delivered or accounted for, did in Michaelmas term, 1691, conſult with their Majeſties council, and ſoon afterwards with the Barons of the Exchequer, what method would be moſt proper to bring the ſub-commiſſioners to a full and particular account; upon which it was reſolved that perſonal interrogatories ſhould be exhibited to them, and that upon peruſal of their anſwers ſuch further proſecution ſhould be made as the court ſhould think fit.

Interrogatories filed, and ſhort anſwers thereto, whereupon informations adviſed.

Accordingly, interrogatories were on the 10th day of February, 1691, filed, and ſeveral of the ſub-commiſſioners, and perſons employed under them, examined thereon; but upon peruſal of their anſwers the King's council found them ſhort and evaſive, and that there was reaſon to proceed againſt ſome of them in another method, which it was reſolved ſhould be by informations in the Exchequer;

Digitized by Google

Exchequer, and the profecution was preparing and carrying on, when the late commiſſioners of the revenue were ſuperſeded in Auguſt 1692.

When the revenue was committed to the management of the commiſſioners, it was declared at the ſame time, that there would be very ſoon a parliament in Ireland; and the commiſſioners had ſcarce entered upon the reſt of the buſineſs, and began to inquire into the nature and condition of theſe forfeitures, when (the elections being over) it appeared that ſeveral of the commiſſioners and ſub-commiſſioners were choſen members of the houſe of Commons; and the commiſſioners believing it not fit for them to give any trouble to the members at the time of their ſitting, they concluded it beſt to reſpite all proceedings of that kind till the riſing of the parliament. The reaſon.

And upon the prorogation of the parliament there iſſued immediately a new commiſſion to inquire expreſsly into the perſonal forfeitures, which in that branch ſuperſeded that to the commiſſioners of the revenue, ſo that for theſe reaſons they did not at all intermeddle in the ſaid matter. A new committee to inquire into perſonal forfeitures.

This is the ſum of the proceedings between the commiſſioners and ſub-commiſſioners of forfeitures, and the commiſſioners of the revenue, concerning theſe forfeitures.

Now the manner in which the collectors accounted for the ſame to the commiſſioners of the revenue was as follows. The manner in which the collectors accounted to the commiſſioners of the revenue.

Digitized by Google

As to the perſonal eſtates.

As to all the goods, corn, ſtock, &c. which came to any of the collectors hands, they at ſeveral times returned up particular accounts thereof, in the charge part of which they made themſelves debtors, according to the ſeveral inventories to the ſaid accounts annexed, for all the goods, &c. which came to their hands, whether the ſame were received by them from the ſub-commiſſioners, or ſeized by themſelves, or received from the commiſſaries general of proviſions by orders of the government; and in order to aſcertain the ſaid charge the better upon them, they were required to make affidavit that their ſaid accounts contained all the goods, &c. that had reſpectively come to their hands.

Charge how aſcertained on the collects.

How diſcharged.

The diſcharge parts of the ſaid accounts contained the manner how the ſaid goods in particular were diſpoſed of under the following heads, viz.

Goods delivered, by orders of the government, or by orders of the court of Exchequer, and the late commiſſioners, to perſons that made out a right to the ſame; eſtimated at about £5000.

Bread, corn, hay, and oats, and other proviſions, &c. delivered by order of the government to the commiſſaries general of proviſions.

Bullocks, oxen, or horſes, fit for carriage, or draught, delivered by like order to William Robinſon, and Francis Cuffe, Eſquires, for the uſe of the train of artillery.

Goods,

Digitized by Google

Goods, &c. ſold by publick cant, purſuant to the inſtructions before mentioned; as to which the collectors were required to make oath, that the ſame were ſold for the particular rates charged in their accounts, for their Majeſties beſt advantage, without any private benefit to themſelves.

Goods remaining undiſpoſed, being for the moſt part lumber, and goods of ſmall value, which the collectors by order of the commiſſioners of the revenue delivered to the commiſſioners of inſpection.

Several of theſe accounts paſſed upon oath in the Exchequer, as the reſpective collectors could be ſpared to come up to paſs their general accounts.

Several bonds alſo delivered by the commiſſioners of the forfeitures to the commiſſioners of the revenue and how diſpoſed of.

The commiſſioners of the revenue alſo received from the commiſſioners of forfeitures ſeveral bonds, taken by them or their ſub-commiſſioners, amounting to £18290, ſome whereof were from proteſtants in poſſeſſion of lands by mortgage from the forfeiting proprietors, amounting to £5900. The condition of the bonds was to account to their Majeſties for the overplus profits of ſuch lands; but by the calamity of the times, the lands were not found worth the intereſt of the money; others were from proteſtants not forfeiting, or papiſts under protection, laying claim to goods which had been ſeized, amounting to £12390; the condition to anſwer the value of the goods therein mentioned, if their Majeſties title ſhould be made out in a ſhort time limited; but this condition putting the proof upon the King made the bonds of little or no

Digitized by Google

value; ſome few of theſe bonds were lodged in the Exchequer in order to proſecution, the reſt were delivered to the commiſſioners of inſpection as aforeſaid.

The goods for which the bonds were taken alſo returned as a charge.

It is to be obſerved, that all the goods for which the ſaid bonds were taken were likewiſe returned as a charge by the late commiſſioners of forfeitures in their ſchedules of forfeited goods, which ſwelled their accounts by two charges for the ſame thing, amounting each to the ſum of £12390.

Proceedings of the commiſſioners of the revenue as to real eſtates.

Having thus given an account of the proceedings of the late commiſſioners of the revenue concerning the perſonal eſtates forfeited to their Majeſties, it now remains to give an account alſo of the real eſtates.

Order to ſet the lands for one year.

The order before mentioned from the lords juſtices, of the 19th of September, 1690, which directed the commiſſioners of forfeitures, to deliver to the commiſſioners of the revenue liſts or ſchedules of all the lands ſeized by them or their ſub commiſſioners, did alſo direct the commiſſioners of the revenue to ſet the ſame for one year, for their Majeſties beſt advantage, purſuant to certain methods propoſed to the lords juſtices, and approved of by them.

Further order to ſet the lands for one year.

The liſts or ſchedules of forfeited eſtates, which were firſt delivered to the ſaid commiſſioners, appearing to them to be very faulty and deficient, in not returning lands of perſons forfeiting, and in returning lands of perſons not forfeiting, upon repreſentation thereof to the lords juſtices, their lordſhips did by their order of the 7th of October, 1690, direct the commiſſioners of the revenue to

Digitized by Google

to ſet all ſuch lands for one year as ſhould appear to them by information, or otherwiſe, to be forfeited to their Majeſties, not tieing themſelves up to the returns of the commiſſioners only.

Adjournment of Setting, where combination was ſuſpected.

But in ſome caſes, where the ſaid commiſſioners perceived a combination among the bidders for ſome of the ſaid lands to be ſet, they ſometimes adjourned ſetting the ſame till a further day, whereof they then ordered further publick notice, to procure more bidders for the lands; particularly in the caſe of ſome baronies of the Earl of Antrim's eſtate, and other lands.

Some lands ſet by ſpecial orders of their Majeſties, not by cant.

And ſometimes they received ſpecial orders from their Majeſties and the government, to ſet particular lands at a certain rent without canting, the yearly value of which at the time they were ſet, amounted to about the ſum of £7428, tho' actually ſet but for £5571.

Purſuant to his Majeſty's declaration or for ſome ſervices done.

Theſe orders were granted, either purſuant to a clauſe in his Majeſty's declaration, for perſons that would come under his protection, wherein it is declared that they ſhould be allowed out of their forfeited eſtates a proportion for their maintenance according to their qualities, or elſe for ſome ſervices done.

How the commiſſioners proceeded where no bidders appeared.

But as well for the year 1691, as the year 1692, there were ſeveral parcels of lands poſted by the commiſſioners to be ſet as aforeſaid, for which no bidders appeared; of theſe lands the commiſſioners cauſed liſts to be drawn out, and ſent them to the reſpective collectors in whoſe diſtricts they lay, to ſet them for one year for their beſt advantage, which the collectors did, as to ſuch

Digitized by Google

ſuch as they could get tenants for; but in ſeveral counties, the country being ſo full of rapparees, the improvements for the moſt part deſtroyed, and the lands waſte, (particularly in the counties of Longford, Limerick, Tipperary, and in the moſt part of Conaught, &c.) no tenants for one year could be had for them: but for ſuch of the ſaid lands as were ſet by the collectors, or inhabited by any tenants, the collectors charged themſelves with the produce thereof, in their accounts upon oath in the Exchequer.

The commiſſioners of the revenue increaſed the rents according to the corn and fallow.

The commiſſioners of the revenue, the firſt year they ſet the ſaid lands, took care to increaſe the rents thereof, according to the number of acres forfeited, and the corn and fallow that appeared to them to be on each parcel of land, by the propoſals of the perſons bidding, or by other informations; and added a clauſe in the leaſes, that if there appeared any more corn or fallow than what was valued and included in the rent of each leaſe, the leſſee ſhould pay at the rate of 20s. per acre of corn, and 5s. per acre for fallow, for ſuch overplus, and the collectors had directions to inquire and return in their accounts, where they found any ſuch overplus; but the greateſt part of the corn and fallow returned by the ſub-commiſſioners of ſeizures, to be ſown, or made on the forfeited lands, did appear not to be forfeited, but to belong to the under tenants, who ſowed and made the ſame, and who were generally either proteſtants, or papiſts under protection, who could pay no more than the rent reſerved on them, where they had leaſes from the forfeiting perſons, or the cuſtom of the country for the ſtanding thereof, where they had none.

In

Digitized by Google

In the leaſes made by the commiſſioners, there was a clauſe that the rent therein reſerved ſhould be paid to their Majeſties, clear, over and above all taxes, charges, &c. whatſoever; whereas other landlords did allow their tenants the militia money, and other extraordinary charges which at that time lay heavy upon the country.

And reſerved the rents clear over and above all taxes.

And the commiſſioners did in ſeveral caſes (when they could) oblige the tenants that took the ſaid lands, the firſt year, to be accountable for the arrear due thereout before they took them; and where they could not, they gave it in their inſtructions to levy, from thoſe that enjoyed the ſaid lands before they were ſet, all ſuch arrears, or ſo much thereof as could be got, which the collectors in their accounts on oath charged themſelves with.

And obliged the tenants to be accountable for the arrears due before they took.

Laſtly, ſeveral of the leaſes made of theſe lands by the commiſſioners having determined the firſt of November, 1692, and the commiſſioners having informed the then chief governor thereof, he ordered them to ſet the ſame for three years; but when they were going to proceed thereon, he countermanded the order, directing them to give notice to the ſaid tenants, that they ſhould reſpectively continue to hold the lands for the half year ending at May following, upon giving ſecurity for payment for the ſaid time, after the rate they paid by their expired leaſes; to the end that all the leaſes that ſhould thenceforth be made of the forfeited lands might commence from May day, 1693, which they did accordingly by publick notice.

New order for ſetting the lands.

But

Digitized by Google

But before the Commiſſioners of the revenue ſet them, a commiſſion iſſued to inſpect and inquire into the forfeited lands.

But before the time came for their making ſuch leaſes, a new commiſſion iſſued to commiſſioners, empowering them to inſpect and inquire into the value and management of all the ſaid forfeitures, and to ſet all the forfeited lands, with many other powers; as may appear by the enrolment of the ſaid commiſſion in the rolls office of this kingdom *.

Differences between the King and houſe of Commons concerning theſe forfeitures.

But great differences ſoon after aroſe between his Majeſty and the Engliſh houſe of Commons, concerning theſe forfeitures; it having been reſolved by them that a bill ſhould be brought in, for attainting the perſons who had been in rebellion in England and Ireland, and for confiſcating their eſtates, and applying the ſame to bear the charges of the war, reſerving to the King a power to diſpoſe only of a third part of them; which was conſidered by the court party as a violation of the right of the Crown, for that his Majeſty had an undoubted right, in virtue of the prerogative, to diſpoſe of theſe forfeitures as he ſhould think proper.

The King grants them away as he thought fit.

However, as this bill was likely to lie long before the lords, many petitions having been offered againſt it, the King, in order to bring the ſeſſion to a ſpeedy concluſion, had promiſed that the matter ſhould be kept entire until the next ſeſſion; which paſſing away without any proceeding in it, his Majeſty thereupon granted away all theſe confiſcations as he thought fit.

* There are three of theſe commiſſioners enrolled in the rolls office of the following dates to wit, 12 November, 4 Will. III. 29 March, 7 do. and 24 February, 8 do.

It

Digitized by Google

It was then immediately alleged that theſe forfeitures would yield a million and a half in value. Great objections were made to the merits of ſome who had the largeſt ſhare in thoſe grants. Attempts had been made in the Iriſh parliament to obtain a confirmation of them; but the earl of Athlone's only was confirmed; ſo that it became a popular ſubject of declamation to arraign both the grants and thoſe who had them. Motions had been often made for a general reaſſumption of all grants made in this reign; to which it was anſwered by the court party, that ſince no ſuch motion was made for the reaſſumption of thoſe made in the reign of King Charles II, notwithſtanding the extraordinary profuſion of them, and the ill grounds upon which they were obtained, it ſhowed both a diſreſpect and ingratitude, if, while no other grants were reaſſumed, this King's only ſhould be called in queſtion; and they propoſed, that if the retroſpect were carried back to the year 1660, they would conſent to it, and urged that what would ariſe by ſuch a retroſpect would be worth while. But the infinite perplexity that would be occaſioned by the unravelling, after ſuch a length of time, the many ſales, mortgages and ſettlements, which had been made purſuant to thoſe grants, was an unanſwerable objection to this propoſal.

Debates in the houſe concerning theſe grants, and a reaſſumption thereof.

But at length a more effectual method was taken; for in the 10th and 11th years of his Majeſty's reign an act of parliament paſſed in England, whereby a commiſſion was given to ſeven perſons named by the Commons, to inquire into the value of the forfeited eſtates ſo granted away, and into the conſiderations upon which theſe grants were made.

An act by which a commiſſion is granted to ſeven perſons to inquire into theſe forfeitures.

Digitized by Google

Zeal of the commiſſioners in exaggerating the value of the grants, and depreciating the merit of the grantees.

Report delivered to the houſe by four only.

Accordingly theſe commiſſioners, namely, the earl of Drogheda, Francis Anneſly, John Trenchard, James Hamilton, Henry Langford, Sir Richard Levinge and Sir Francis Brewſter proceeded in the execution of this commiſſion, in which they ſhowed that out of the ſale of the confiſcated eſtates £1,699,343 might be raiſed. They diſagreed in ſome points, which cauſed the report to be delivered to the houſe by four only of the ſeven commiſſioners; the other three, namely, the earl of Drogheda, Sir Richard Levinge and Sir Francis Brewſter, refuſing to ſign it, thinking it falſe and ill grounded in ſeveral particulars, of which they ſent an account to *both Houſes*; but no regard was paid to their memorial, nor any inquiry made into their objections; the ſpecious propoſal of raiſing ſuch a large ſum towards diſcharging the publick debts prevailed ſo with the houſe, that no complaints againſt the proceedings of the commiſſioners could find admittance, and all the methods uſed to diſgrace the report had the contrary effect *.

The

* The report conſiſted of ninety articles, the chief of which are theſe.

The number of acres in the ſeveral counties belonging to forfeiting perſons.	1,060,792
Which being worth £211,623 a year, at ſix years purchaſe for a life, and at 13 years for an inheritance, amounted to	£2,685,130
Out of theſe lands, the eſtates reſtored to the old proprietors by the articles of Limerick and Galway are valued at £724,923, and thoſe reſtored by royal favour at £260,863, after which and ſeveral other allowances, the groſs value of the eſtates forfeited ſince the 13th of February 1688 amount to	£1,699,343

The No. of grants and cuſtodiams ſince the battle of the Boyne under the great ſeal of England are 76, ſome of the principal of which are mentioned, viz.

	Acres.
To the lord Romney 3 grants of	49,517
To the earl of Albemarle 2 grants of	108,635

To

Digitized by Google

The Commons, having examined this report, came to an unanimous reſolution, that a bill ſhould be brought in to apply all the forfeited eſtates in Ireland, and the grants thereof ſince the 13th of February 1688, to the uſe of the publick; Reſolutions of the houſe of Commons upon the report and upon the forfeitures and grants.

To William Bentick (lord Woodſtock)	135,820
To the earl of Athlone (occaſioned by the parliament of Ireland)	26,480
To the earl of Galway	36,148
To the earl of Rochford two grants of	30,512
To the lord Conningſby	5,966
To colonel Guſtavus Hamilton, for his ſervices in wading through the Shannon, and ſtorming Athlone, at the head of the Engliſh grenadiers	5,382
To ſir Thomas Prendergaſt for the moſt valuable conſideration of diſcovering the aſſaſſination plot	7,082

The report alſo obſerves, that ſeveral of the grantees had raiſed great ſums of money by ſale of their lands, amounting in all to £68,155; particularly the earl of Athlone (his grant being confirmed by act of parliament) has ſold to the amount of £17,684, the lord Romney £30,147, and the earl of Albemarle £13000.

In theſe and moſt other articles all the commiſſioners agreed; but a difference aroſe amongſt them on account of King James's private eſtate, granted to him when duke of York. This eſtate three of the commiſſioners, and particularly Levinge, would not allow to be forfeited, and conſequently ought not to be reported. Whilſt the houſe had this matter under debate, Mr. Arthur Moore, a member thereof, ſent the commiſſioners a letter of his own private motion, wherein he directed them to make a ſeparate article of the Lady Orkney's grants, becauſe that might reflect upon *ſome body*, meaning the King. Mr. Montague having learned the contents of Moore's letter, and being zealous to vindicate the King's honour, which he thought ſtruck at in the letter, complained of it to the houſe. Mr. Moore, being preſſed to tell his author, at firſt excuſed himſelf, alleging that he was under a private obligation not to reveal what had paſſed in private converſation, but the houſe inſiſting upon it, he named Lord Chancellor Methuen, who was alſo member of the houſe, who denied poſitively that he had mentioned any ſuch thing. The houſe therefore reſolved that the report was falſe and ſcandalous, and a motion being made that the four commiſſioners for Iriſh forfeitures, who ſigned the report, had acquitted themſelves with underſtanding and integrity, a warm debate aroſe, and in the event it was reſolved in their favour, and that ſir Richard Levinge had been the author of the groundleſs and ſcandalous aſperſions caſt upon the four commiſſioners,

Digitized by Google

publick; and ordered a clauſe to be inſerted therein, for erecting a judicature for determining claims touching the ſame. They likewiſe reſolved, that they would not receive any petition from any perſon whatſoever, touching the ſaid grants or forfeited eſtates; and that they would take into conſideration the great ſervices performed by the commiſſioners, appointed to inquire into the forfeited eſtates of Ireland. They alſo reſolved, "that the adviſing, "procuring, and paſſing theſe grants had occaſioned great "debts upon the nation, and heavy taxes upon the people, "and highly reflected upon the King's honour; and that "the officers and inſtruments concerned in the ſame had "highly failed in the performance of their truſt and "duty." And they voted, that the ſaid reſolution ſhould be preſented to the King in form of an addreſs; which being done, the King anſwered, "that he was not only "led by inclination, but thought it juſtice, to reward "thoſe who had ſerved well, particularly in the reduction "of Ireland, out of the eſtates forfeited to him by the "rebellion there; that the long war occaſioned great "taxes, and had left the nation in debt, and that the "taking juſt and effectual ways for leſſening that debt, "and ſupporting the publick credit, was what, in his

And preſented to the King in form of an addreſs, and the King's anſwer thereto.

and he was committed to the tower; however, the grant to the counteſs of Orkney was placed at the end of the report under theſe terms, viz. "a grant under the great ſeal of England, dated May 30th 1695, paſſed to Mrs. Elizabeth Villiers, now counteſs of Orkney, of all the private eſtates of the late King James (except a ſmall part in grant to the lord Athlone) containing 95,649 acres, worth yearly £25,995 18s. value £337,943; out of which is payable £2000 a year to Lady Suſanna Belaſyſe for her life, and £1000 a year to Mrs. Godfrey for her life; and almoſt all the old leaſes determine in May 1701, when the eſtates will anſwer the values above mentioned." This report was animadverted upon by many political tracts, and more eſpecially in one entitled *jus Regium*, or the King's right to grant forfeitures, wherein the value of the Iriſh confiſcations are reduced to £500,000 and the report of theſe commiſſioners much expoſed.

"opinion

Digitized by Google

" opinion, would beſt contribute to the honour, intereſt,
" and ſafety of the kingdom."

Re-aſſumption bill and reſolutions paſſed by the Commons.

This anſwer ſo provoked them, that they reſolved, " that whoever adviſed it had uſed his utmoſt endeavours " to create a jealouſy between the King and his people." They then paſſed the bill of reaſſumption; and ordered the report of the commiſſioners for Iriſh forfeitures to be publiſhed; and that the reſolutions of the 18th of January and 4th of April 1690, relating to the forfeitures, the King's ſpeech of the 5th of January 1690, the addreſs of the houſe of the 4th of March 1692-3, and his Majeſty's anſwer thereunto, be alſo reprinted with the report. And they reſolved, that the procuring or paſſing exorbitant grants, by any member now or formerly of the privy council, in this or any former reign, to his uſe or benefit, was a high crime and miſdemeanor.

No regard had in the re-aſſumption bill to the improvements made.

In the reaſſumption bill little regard was ſhown to the purchaſes made under the King's grants, and to the great improvements made by the purchaſers and tenants, which were ſaid to have doubled the value of thoſe eſtates.

Truſtees appointed of the forfeited eſtates and their powers.

However, that ſome juſtice might be done both to purchaſers and creditors, thirteen truſtees were named, in whom all the forfeitures were veſted, with authority to hear and determine all juſt claims relating to thoſe eſtates, and to ſell them to the beſt purchaſers; and the money to be raiſed to be appropriated to pay the arrears of the army. They alſo reſolved, " that no perſon ſhould be a truſtee " who had any office of profit, or was accountable to the " King, or was a member of parliament; and that the " truſtees be choſen by balloting; which being done, " the choice fell upon Francis Anneſly, James Hamilton,

" John

Digitized by Google

" John Baggs, John Trenchard, James Iſham, Henry Lang-
" ford, James Hooper, Sir Cyril Wyche, John Cary, Sir
" Henry Sheers, Thomas Harriſon, William Fellows, and
" Thomas Rawlins."

The reaſſumption bill conſolidated with the money bill, and paſſed into a law.

The conteſts were very warm about paſſing the bill, and in the end it was conſolidated with the money bill, which was to paſs for payment of the fleet and army, and under the title of a bill, " For granting an aid to the " King by the ſale of the forfeited and other eſtates in " Ireland, and by a land tax in England." It was then ſent up to the lords, and after ſeveral conferences between them, and much difference, was paſſed into a law *.

Eſtates forfeited in the rebellion in 1688.

And by this act, viz. 11 and 12 Will. III. ſeſs. 2. c. 2. Eng. all honours, manors, lands, tenements, rents, and reverſions, in Ireland, whereof any perſons who ſtood convicted or attainted of high treaſon or rebellion in Ireland, or of other treaſon committed in foreign parts, ſince 13th February, 1688, or ſhould be convicted or attainted before the end of Trinity term, 1701, or who ſtood convicted or attainted by reaſon of being found by inquiſition to have died or been ſlain in actual rebellion ſince the ſaid 13th of February, 1688, were ſeized or poſſeſſed or intereſted in, or entitled to, or any in truſt for them, on the ſaid 13th day of February, or at any time after; or whereof

* Among all the hardſhips of this bill the caſe of the Earl of Athlone was moſt ſingular; the Commons had been ſo ſenſible of his good ſervices in reducing Ireland, that they addreſſed the King to give him a recompenſe ſuitable thereto; the parliament of Ireland had confirmed a grant made to him of between 2 and 3000l. a year; and he had ſold to thoſe who thought they had purchaſed under an unqueſtionable title, yet no regard was had thereto, and the eſtate was thrown into the heap.

the

Digitized by Google

the late King James II, or any in truſt for him, was ſeized or intereſted in at his acceſſion to the Crown of England, are veſted and ſettled in the real poſſeſſion and ſeizin of the truſtees, and their heirs, executors, &c. according to the ſeveral * eſtates and intereſts which the ſaid perſons, &c. had therein on the ſaid 13th of February, or at any time afterwards; to the end the ſame may be ſold and diſpoſed of for the uſes mentioned in the act. And where any of the ſaid perſons were ſeized of an eſtate tail only in the ſaid honours, manors, &c. the ſame are thereby enacted to be veſted in the ſaid truſtees, and their heirs, in fee ſimple, to be ſold and diſpoſed of as aforeſaid; with a ſaving for perſons compriſed within the articles of Limerick or Galway.

Or whereof King James II. was ſeized at his acceſſion. veſted in truſtees.

To be ſold for the uſes in the act.

Eſtates tail veſted in the truſtees in fee.

And all grants, demiſes, ſurrenders, releaſes, cuſtodiams, &c. or diſpoſitions, ſince the ſaid 13th of February, 1688, made or granted under the great ſeal of England and Ireland, or ſeal of the Exchequer in Ireland, or by act of parliament in Ireland, or otherwiſe, of any of the ſaid forfeited or forfeitable eſtates or intereſts, or of the eſtate of the ſaid late King James, or of any of the quit rents, crown rents, compoſition rents, or chiefries, belonging to the Crown of Ireland, are thereby declared null and void.

All grants, &c. of the ſaid forfeited eſtates, &c. ſince the 13th of February, 1688, void.

* In the caſe of Ellis and Segrave, in the court of Chancery here, Mich. 1758, a queſtion aroſe, as a principal point in the caſe, as to what eſtates were veſted in the truſtees by this act. Lord Bowes was of opinion that only the eſtate or intereſt, which the perſon convicted or attainted had in the lands, was veſted in the truſtees; and on this opinion granted an iſſue. But on appeal to the Houſe of Lords of Great-Britain, they were of opinion that the lands of ſuch perſons are veſted generally; and that all perſons, having reverſions, remainders, or incumbrances, were to claim them within the time preſcribed, or to be without remedy; and that the judgment of the truſtees was to be concluſive.

And

Digitized by Google

Rewards to be given to diſcoverers of forfeited eſtates concealed.

And a power was given the truſtees to reward diſcoverers of any ſuch forfeited eſtates concealed, by giving them ſuch proportion of the value, after ſale thereof, as they ſhould think fit.

Claims to be made of eſtates, charges, &c. on the lands veſted.

And all perſons whatſoever, bodies politick and corporate, having any eſtate, right, title, intereſt, &c. charge or incumbrance whatſoever, in or to the lands, tenements, &c. veſted in the truſtees, before the 13th of February, 1688, by reaſon of any ſettlement, judgment, &c. affecting the ſaid eſtates, were thereby directed, on or before the 10th of Auguſt, 1700, (which time was by 12 and 13 Will. III. c 10. Eng. enlarged to the 25th of March, 1702,) to enter their claims and demands thereto before the truſtees; or in default thereof, every eſtate, right, title, intereſt, &c. in or to the ſaid premiſes, was to be void, and the eſtates ſo liable thereto diſcharged of and from the ſame. And the truſtees were to hear and determine ſuch claims before the 25th of March, 1701.

The truſtees to be a court of record.

The truſtees to be a court of record, and their judgments or decrees to be entered of record in books of parchment to be provided for that purpoſe, and to be final, notwithſtanding any diſability in the claimants. And all infants, feme coverts, idiots, perſons of inſane memory, or beyond the ſeas, corporations, and all other perſons, bodies natural and politick, their heirs and ſucceſſors, and their intereſts were to be concluded by ſuch judgment *.

And

* It was determined in the King's bench here, in the caſe of Dixon and Anneſley, and the judgment affirmed, upon a writ of error in the King's bench in England, Hill, 5 Ann. that the truſtees had no power to determine what lands were veſted in them;

Digitized by Google

And that the truſtees, upon allowing ſuch claims, for the better ſecurity of ſuch claimant, his heirs, executors, &c. ſhould give certificates under their hands and ſeals, containing the ſubſtance of ſuch claim, and the allowance thereof; (which certificate, or a copy of the entry of the decree or judgment in their books, was made evidence, in all courts, of the allowance of ſuch claim) and that ſuch eſtate, right, title, intereſt, &c. or incumbrance, ſo allowed, ſhould never after be called in queſtion by the King, his heirs or ſucceſſors, or by the truſtees, or any claiming under them, or any of them; ſubject, nevertheleſs, to the power herein after given to the ſaid truſtees concerning the ſame.

Claims may be certified, and a copy good evidence.

And, after the expiration of the time for making ſuch claims, the truſtees were thereby directed, before the 25th of March, 1702, to ſell the eſtates and intereſts veſted in them, and not claimed, and the eſtates and intereſts claimed, as ſoon as the claims ſhould be determined; ſuch ſale to be made to any perſons, bodies politick or corpo-

The lands, &c. to be ſold by the truſtees by publick cant.

them; for that no lands were intended to be veſted in them but ſuch lands as belonged to forfeiting perſons, or to King James II. which was a matter they could not determine; and that their power to inquire which were thoſe lands was only in the nature of an inquiſition: and that therefore if an innocent perſon claimed an eſtate of inheritance before the truſtees, and his claim were diſallowed, he was not precluded from trying his title at law; for that their determination as to that matter was *coram non judice*. But it ſeemed to be admitted that their determinations as to claims of particular eſtates, charges, or incumbrances, were final and concluſive. Holt's, rep. 372, 394.

But by 6 Ann, c. 34. Eng. all perſons claiming right or title to any of thoſe eſtates, or any incumbrances thereon, as not being veſted in the truſtees, or on any other pretence, were limited to proſecute their claims in two years from the 24th of June, 1708, in any court of record, or otherwiſe to be barred.

Digitized by Google

rate, by cant or auction. And the power to the truſtees to ſell was afterwards, by 1 Ann, c. 13. Eng. enlarged to the 24th of June, 1703.

Such as remained unſold the 24th June, 1703, veſted in the Crown under the management of the commiſſioners of the revenue.

And by 1 and 2 Ann, ſtat. 2. c. 21. Eng. all eſtates veſted in the truſtees to be ſold, and which were not ſold before the 24th of June, 1703, or otherwiſe diſpoſed of, purſuant to the former act, were veſted in the Crown for the uſes intended by the act aforeſaid, ſubject to ſuch orders as ſhould be given by the parliament of England in that behalf; and from that day all powers given to the truſtees were to ceaſe, and the truſtees were to deliver up to the commiſſioners of the revenue, by indenture to be enrolled in the Exchequer here, all deeds, records, and papers, in their cuſtody, touching the premiſes: and after that day the ſaid commiſſioners were to levy and collect all the rents and profits of the ſaid forfeited eſtates, and pay the money ariſing thereby, after all charges, into the Exchequer, there to be kept apart from all other the King's treaſure, to be applied for the uſes aforeſaid, according to the orders of the parliament of England.

But the commiſſioners cannot make leaſes of them.

But it is held that the commiſſioners of the revenue cannot make any effectual leaſe of any part of thoſe forfeited eſtates which remain undiſpoſed of, they having only a power to levy and collect the rents, &c. and that ſuch leaſe muſt be made by letters patent under the great ſeal.

Whether they can give a reward to diſcoverers.

Although the encouragement given to the diſcoverers of concealed forfeited eſtates, by the power given to the truſtees of allowing to the diſcoverers a fourth part of the value

Digitized by Google

value of what ſhould be ſo diſcovered, be not continued by the laſt mentioned act, nor that power transferred to the commiſſioners of the revenue, yet it is thought that the commiſſioners may, by his Majeſty's directions, make an allowance for ſuch diſcoveries, it being a neceſſary and incident charge relating thereto.

Digitized by Google

CHAP. XXIII.

OF INFORMATIONS IN THE EXCHEQUER.

Informations in this court what.

AN information on behalf of the Crown, filed in this court, is a method of ſuit for the recovery of money or other chattels; or for obtaining ſatisfaction in damages for any perſonal wrong committed in the lands or other poſſeſſions of the Crown. And it is grounded merely on the intimation of the Attorney general, who gives the court to underſtand and be informed of the matter in queſtion.

The different kinds.

The moſt uſual informations are thoſe of *intruſion*, *debt*, and *devenerunt*; which latter is the Crown's action of trover. But there is alſo a particular kind of information, ſtyled *in rem*, when any goods are ſuppoſed to become the property of the Crown, and no man appears to claim them, or diſpute the title of the King.

The proceſs to iſſue thereon.

Upon the above general kinds of information the Attorney general may have an attachment for the firſt proceſs if he requires it; upon which the defendant is to put in bail if it be required. But the moſt ordinary courſe is

by

Digitized by Google

by *ſubpœna*, and proceſs of contempt; and if it be againſt a lord ſpiritual or temporal, or a corporation, proceſs of *diſtringas* is to go.

If the King be ſeized of lands or tenements he cannot be diſſeized or ejected, but if any one enters he will be an intruder upon the King's poſſeſſion; and therefore if a man enters upon the King's demeſnes, and takes the profits, it will be intruſion; ſo if he enters upon a poſſeſſion caſt upon the King by deſcent, eſcheat, *&c.* before entry by the King; or if a man enters upon a farmer, or committee of the King; or if the King's tenant hold over his term; or if a man ouſts the King's leſſee for years; all thoſe are intruſions on the King, for which an information will lie. ſtamf. prær. 56. b. Co. Litt. 277. a. Sav. 7. 69. Information of intruſion where it lies.

An information of intruſion likewiſe is the proper remedy for the recovery of eſtates forfeited to the Crown, upon attainders of high treaſon, or which the Crown is entitled to by eſcheat. But tho' by 33 Hen. VIII. c. 20. all lands, *&c.* forfeited to the Crown by an attainder of high treaſon are, *ipſo facto*, veſted in the Crown, without any office or inquiſition found, yet in ſuch caſe it is neceſſary, for aſcertaining the certainty of the lands, to have them found by office, by which they may be put in charge; which is called an office of inſtruction. For recovery of lands forfeited or eſcheated.

The King by his prerogative may enforce the defendant in informations of intruſion to plead his title ſpecially; and the ancient courſe of the Exchequer has been, that if in ſuch informations the defendant plead "not "guilty," he ſhall loſe the poſſeſſion. And it is ſaid that the reaſon of this courſe is, for that regularly the King's The defendant muſt plead his title ſpecially.

Digitized by Google

King's title appears of record, and therefore the defendant may take knowledge thereof; and the rather for that in every information of intruſion it is ſpecified of whoſe poſſeſſion the lands, &c. were; but if the defendant pleads "not guilty," the King's counſel cannot know the defendant's title to provide to anſwer the ſame, as the defendant may do the King's title. 4 inſt. 116. Dyer 238. Hard. 451.

But not where the King, &c. has been out of poſſeſſion for twenty years.

But now by 15 Car. I. c. 1. where the King, or thoſe under whom he claims, or others claiming under the ſame title, hath or have been or ſhall be out of poſſeſſion by the ſpace of twenty years, and hath or have not taken the profits of any lands, &c. within that ſpace, before any information of intruſion brought to recover the ſame, in every ſuch caſe the defendant may plead the general iſſue, and retain the poſſeſſion until the title be tried, and found or adjudged for the King.

And no *ſcire facias* ſhall be brought in ſuch caſe.

And by that ſtatute, where ſuch an information may aptly be brought on the King's behalf, no *ſcire facias* ſhall be brought, whereunto the ſubject ſhall be forced to a ſpecial pleading, and be deprived of the benefit of the act.

Plea muſt conclude with a traverſe of the intruſion.

The plea of a ſpecial title in the defendant muſt conclude with a traverſe of the intruſion laid in the information. Plowd. 548.

Replication.

If the plea alleges ſeveral facts, the King by his prerogative may in his replication traverſe them all, tho' a common perſon ought to traverſe but one. Sav. 19, 64.

If

Digitized by Google

If the plea alleges a title which avoids the poſſeſſion in the King, ſuppoſed by the information, the King need not maintain the information, but may traverſe the title alleged by the plea. Sav. 61, 64. Cr. Ja. 481.

But it is ſufficient if the King by his replication traverſes ſo much of the title as encounters the information, without anſwering to the whole title alleged by the defendant. As if to an information of intruſion in the moiety of a manor, the defendant ſays, A. was ſeized of the whole, and died ſeized of the whole, by which there was a deſcent to the defendant, it is ſufficient to traverſe that he died ſeized of ſuch a moiety. Sav. 61.

Judgment.

The judgment, in an information of intruſion, for the King is, "that the defendant be convicted of the intruſion, &c. and be removed from the poſſeſſion, and be attached to make a fine; and ſometimes that the lands, &c. be taken into the King's hands, and the defendant attached &c." and upon ſuch judgment, every party to the information or claiming under him ſhall be removed from the poſſeſſion; but a ſtranger to the information ſhall not be debarred from his entry by ſuch judgment; for it does not include any judgment that the king recover the ſeizin. 1 Co. 40. a. 22. a. Plowd. 561. a. Sav. 35 a. Hard. 460.

It is ſaid in Sav. 49, that upon an information for intruſion and cutting trees, or taking other valuable things, there is judgment for damages; but the reporter adds a quære.

Information by Engliſh bill.

The King may alſo, at his election, proceed by information by Engliſh bill in equity for the recovery of lands to which he is entitled; and in this caſe the bill is alſo to be in

Digitized by Google

in the name of the Attorney general, and the proceedings are to be the ſame as in other Engliſh bills in this court. And it is often thought more adviſable to purſue ſuch method, as well for diſcovery of evidence, as to avoid the partiality of juries.

Informations in debt.

The King may alſo proceed againſt his debtor by way of information of debt, in the name of his Attorney general, or if his debtor die, the like remedy may be purſued againſt his executors, or heir and terre-tenants. Comyn. 437. Hard. 440.

On penal ſtatutes. 3 Blacks. c. 17.

This information is likewiſe brought for any forfeiture to the Crown, upon the breach of a penal ſtatute. And the information by the Attorney general is moſt commonly uſed to recover forfeitures occaſioned by tranſgreſſing thoſe laws, which are enacted for the eſtabliſhment and ſupport of the revenue; others, which regard mere matters of police and publick convenience, being uſually left to be enforced by common informers in *qui tam* informations, or actions, which may be ſued for in other courts as well as the Exchequer. But after the Attorney general has informed upon the breach of a penal law, no other information can be received. Hardr. 201.

A penalty not appropriated muſt be ſued in Exch.

If a penalty is inflicted by ſtatute on any offence, and there be no appropriation of it, nor any method preſcribed by which it ſhall be recovered, the penalty is to be conſidered as a debt to the Crown, ſuable for in the Exchequer; and no indictment will lie for the offence. Stra. 828.

Where a penalty veſted in the Crown no information in B. R.

And where a penalty is veſted in the Crown only, the court of King's bench will not grant an information; but it muſt be filed by the Attorney general. Stra. 1234.

All

Digitized by Google

Informations for non-payment of duties, evidence may be given of a different day.

On an information in debt for non-payment of duties, evidence may be given of an importation on a different day from that laid in the information; but, upon an application to the court by the defendant, they will make an order for confining the evidence to a certain time. Bunb. 223.

Or of several days.

So on an information in debt for the duties of goods imported on a day certain, evidence may be given of several importations at several times. Bunb. 262. But in this case the plaintiff had given the defendant a note of the times of the importations.

Information for making a false report, must be laid where the importation was.

In an information for not making a true report, contrary to the statute, the importation was laid to be within the port of London; upon evidence it appeared that the importation was at Cowes in the county of Southampton. It was objected for the defendant that, though the information might be brought in Middlesex, yet they ought to have alleged the importation to have been according to the fact, viz. at Cowes. And of this opinion was the Chief Baron. Bunb. 261.

Information on a statute must bring the offence within the statute.

An information upon a statute must set forth every thing requisite to bring the offence within the act; and the words "contrary to the form of the statute" will not help it; for that is only a conclusion from the premises. Bunb. 129, 177. Hard. 217.

Informations where to be filed.

All informations, as well those brought by the Attorney general, as those brought by common informers, are to be filed in the pleas office in the Chief remembrancer's office; but where a penalty is sued for in this court by way of

Digitized by Google

action, and not by way of information, it is to be filed in the pleas office in the law ſide of the court, where actions are brought between party and party.

The rules to plead.

And upon thoſe informations in the Chief remembrancer's office, the ſecondary is to enter three rules to plead in four days; and when the three rules are expired, judgment is entered by default on a certificate of no plea.

Offences againſt the act of cuſtoms determinable by the Exchequer.

By ſtat. 14 and 15 Car. II. c. 9. commonly called the act of cuſtoms, all offences againſt that act are thereby directed to be heard and determined by the barons of the Exchequer. And one moiety of all fines, penalties, or forfeitures, is thereby given to the King, and the other to him that ſhall ſeize or ſue for the ſame in the ſaid court. And all proſecutions under the act muſt be within 12 months after the offence committed.

Thoſe againſt the act of exciſe by the commiſſioners, &c.

But by 14 and 15 Car. II. c. 8. commonly called the exciſe act, all offences againſt that act are to be tried before the commiſſioners of exciſe, or their ſub-commiſſioners. And as many breaches of the cuſtoms are likewiſe offences againſt the act of exciſe, few informations for penalties under the act of cuſtoms have of late years been brought on the act of cuſtoms.

Offences only determinable in Exchequer.

The following offences however of the act of cuſtoms, are not included in the act of exciſe, and can therefore be only proſecuted in this court, viz.

Receiving goods on board before declaration, or ſailing before outvoice.

No maſter, &c. ſhall receive on board any goods to be exported, before he ſhall have declared to the cuſtomer, &c. his intention to lade, and the port he is bound to; nor

Digitized by Google

nor ſhall ſail before he ſhall have outvoiced upon oath; under the penalty of £100.

No maſter, &c. ſhall break bulk until he ſhall invoice upon oath, and enter into bond that he ſhall not ſail without being cleared and diſcharged by the collector, &c. under the penalty of £100. Breaking bulk before invoicing and give bond, &c.

If any perſon ſhall refuſe to permit the collector, &c. to ſecure or take out of any veſſel any fine goods of ſmall bulk, to be put into the warehouſes of the cuſtom-houſe, till the duty be paid; or to unlade and ſecure all goods which ſhall not be unladed or diſcharged within twenty eight days after the arrival of the veſſel, he ſhall forfeit £100. Refuſing to permit fine goods, or goods not unladen within 28 days to be brought on ſhore.

If after the clearing of any ſhip or diſcharging the officers from on board, there ſhall be found on board any goods which have been concealed from the officers, and for which the cuſtom has not been paid, the maſter ſhall forfeit £100. Having concealed goods aboard after clearance.

Digitized by Google

CHAP. XXIV.

OF INFORMATIONS IN THIS COURT ON GOODS SEIZED, OTHERWISE STYLED IN REM.

Seizure of derelict goods for the Crown. Gilb. treat. Exc. 180, &c.

AND firſt it is to be obſerved, that this proceeding of ſeizing goods and merchandizes for the non-payment of cuſtoms, and the like, is termed in the law a proſecution *in rem*. For the better underſtanding of which, we are to conſider that, where there was no property in lands or goods, they belonged to the Crown; and hence, if a man died without heir, and there was no tenure of his lands from any particular lord, the eſcheator ſeized them for the Crown. So all wrecks, waifs, and eſtrays were ſeized by the ſheriff for the Crown; and in thoſe caſes, on ſuch ſeizures, they uſed to make proclamation; and if, upon the ſecond proclamation, no body came in to claim the lands or goods, they were preſumed to be derelict.

So that upon every ſeizure they were wont to file informations in the courts of record, and then to make the firſt proclamation, in order to condemn ſuch lands or goods to the King's uſe. And then there iſſued a commiſſion of appraiſement, in order that the ſame might be valued, and that the ſheriff might anſwer the value thereof

Digitized by Google

thereof to the King's uſe; and upon the return of the commiſſion of appraiſement there was a ſecond proclamation made; and then, if no body put in his claim, they were preſumed to be derelict, and forfeited to the Crown. But in the caſe of eſtrays there was an abuſe, by the ſheriff's taking up horſes and ſheep, and getting them appraiſed and proclaimed, and forfeited to the Crown as derelict; and therefore a year and day was given to the owner to claim before ſuch preſumption took place.

Forfeitures under penal laws deduced therefrom.

When they conſtructed penal laws by way of forfeitures, the forfeiture was appointed *in rem*, and likewiſe a penalty was laid upon the perſon tranſgreſſing the law; and hence it was that, upon ſeizures, ſuch goods were often derelict, becauſe the owners would not come in to claim them, leſt they ſhould be ſubject to a perſonal information; and therefore the two informations were entered; and upon the firſt proclamation a writ of appraiſement went out, that the officer or perſon that ſeized might be anſwerable for the King's part, as the claim was always entered upon the ſecond proclamation.

Proceedings in the Exchequer on goods ſeized, *&c.*

But the proceedings in the court of Exchequer on goods ſeized, *&c.* at this day, are thus;

By information.

When the commiſſioners of his Majeſty's revenue have directed the proſecution, the ſolicitor of the revenue is to file an information in the office of pleas in the chief remembrancer's office, in the name of ſome fictitious perſon; but in theſe caſes, no proceſs whatſoever is to iſſue, either before or after the information is filed, as the ſeizure is deemed to be ſufficient notice to the proprietor and every perſon concerned.

And

Digitized by Google

Rules to plead.

And upon theſe informations the ſecondary is to enter rules to plead, as upon informations *qui tam*, *&c.* upon penal ſtatutes; and the proceedings to judgment, are the ſame, for want of a plea.

Proclamations.

And when the information is ſo filed, the ſolicitor of the revenue may cauſe the uſual proclamations to be made, which are thus, viz.

"If any perſons will claim property to, or ſhow cauſe why the ſhip or veſſel called ——— with her furniture, *&c.* lately ſeized at *&c.* being imported contrary to the ſtatute, ſhould not be forfeited, let them come forth, and they ſhall be heard."

And on the ſecond or third day afterwards, incluſive, the like proclamation is to be made; and in the ſame time afterwards a third; and theſe proclamations are made in the Exchequer, ſitting the court, and entered in the rule book; and the firſt of them is generally made immediately after the information is filed, and before any rule to plead is entered thereon; tho it is ſometimes otherwiſe.

Judgment for want of a plea and ſale of the goods and writ of delivery.

And immediately after the third proclamation is made, and on the ſame day, judgment being firſt entered upon the information for want of a plea, a motion may be made by the counſel to the commiſſioners for a day to be appointed for the ſale of the ſeizure, which the court will order. And on that day the counſel to the commiſſioners is to move on the ſaid order, that the ſeizure may be ſold purſuant thereto, which the court will alſo order; and then the ſeizure is to be ſet up to cant, and the higheſt

Digitized by Google

higheſt * bidder is declared the purchaſer, and thereupon an order is entered of courſe for a writ of delivery to iſſue for the delivery of the goods purchaſed to the purchaſer, on his paying the money to the Chief remembrancer; but generally the counſel to the commiſſioners moves the court, at the ſame time, that the Chief remembrancer may pay the money to the ſolicitor of the revenue, which the court will alſo order.

very extraordinary practice

Writ of appraiſement for the petitioner, in what caſes.

And note, in the general, where there is no claim, and eſpecially if the goods be of a periſhable nature, the ſolicitor of the revenue moves for a † writ of appraiſement, which is granted of courſe.

If

* In Bunb. 77. it is ſaid, that if there be a condemnation without a trial, the bidder muſt ſtand to all hazards; but if after trial the bidder ſuffers by delay, the the court often diſcharges the bidder. But the reporter adds a quere. And it is likewiſe there ſaid that the court had ſome doubt what execution to order againſt a bidder not having paid his bidding, the proceſs of the pipe being, that which ſhould regularly iſſue upon an informatio nof the ſeizure; but that that being long and tedious, they ordered a *feri faciας*; as is uſual in the caſe of a perſonal information. And, in a note there, two caſes are cited, where, in ſuch caſes, the court upon affidavit iſſued attachments againſt the bidder.

† In Bunb. 30. it is ſaid, that after a ſeizure of goods, the regular ſteps are to file an information, and then take out a writ of appraiſement, upon the return of which the defendant is to enter his claim, and then may move for his writ of delivery. If the proſecutor delays filing an information, or does not ſue out a writ of appraiſement, the defendant, upon entering his claim in the book in the office, may move for a writ of delivery.

And in Bunb. 59. it is held that writs of appraiſement are a neceſſary part of the information upon a ſeizure, by the courſe of the court; beſides the act of tonnage, and poundage directs a moiety of the rates to be anſwered to the King, which ſhews there is a neceſſity for a valuation.

And

Digitized by Google

Claim of goods seized and form thereof.

If any person would claim the goods, he may do so at any time before the rule for judgment for want of a plea is made absolute; and the claim is to be entered in the office of pleas in the Chief remembrancer's office in the appearance book, thus; "A. B. master of the ship or vessel called ——— *&c.* this day appeared by E. M. his attorney, and claims the property of, *&c.* at the suit of, *&c.* who as well, *&c.*"

Appearance to be entered with it.

So that at the same time the claim is entered, an appearance is to be also entered for the defendant by his attorney.

Rule, 24th April, 1716, recognizances in what cases upon claims.

By a rule made in the office of pleas, in the Chief remembrancer's office, the 24th of April, 1716, it was ordered, that upon all informations to be exhibited for ships, wool, or other goods thereafter seized, no person, or persons, be thenceforth admitted to claim property in the same, before he, or they, enter into a recognizance, with good security, to pay the appraised value of the same, the penalties in the acts of parliament made in such cases, and also all such costs and damages, as shall

And in another case there, after a condemnation and sale upon a seizure, it appearing to the court that the species of the goods had not been described with sufficient certainty in the writ of appraisement, the court made a rule to show cause, why the condemnation should not be set aside, and why an attachment should not go against the seizers. Bunb. 89.

Where it appears to the court that the appraisement is at more than the goods are worth, the court will order a re-appraisement; for otherwise the seizing officer might be undone, who must pay the King's moiety, according to the appraisement. Bunb. 49. 185.

be

Digitized by Google

be awarded on the proſecution of any information, to be brought for the ſame; unleſs the party, or parties, who claim property, ſhall make it appear to the court by affidavit, that ſuch ſhip, wool or other goods are really and truly his or their property.

Rule, 5th June 1716, no perſon admitted to claim unleſs he make affidavit of the property, &c.

And by another order alſo made there the 5th of June, 1716, it was ordered, that where any perſon, or perſons, come to claim property in ſhips, wool or other woollen goods ſeized, or thereafter to be ſeized, he or they ſo claiming property ſhall make it appear to the court by affidavit, that before and at the time of ſuch ſeizure, the property of the ſaid ſhip, wool or other goods, was in him or them; and he or they are likewiſe to make it appear to the court by ſuch affidavit, how he or they came to have the property of ſuch ſhip, wool or other woollen goods; otherwiſe no perſon, or perſons, to be admitted to claim a property in the ſame.

The claim to be by attorney.

Now, in the caſe of Forder *qui tam, &c.* againſt eight hogſheads of ſugar, in this court, the 25th of November, 1734, and the 18th of June, 1735, a queſtion aroſe upon the aforeſaid two rules, whether the claimant was not to appear in court in perſon, and claim the goods; and it was debated ſeveral days, but no determination was made by the court; but the practice is now to enter the claim by an attorney in manner before mentioned.

Writ of appraiſement how to be obtained.

If the claimant would have a writ of appraiſement, he may; but he is firſt to apply to the ſolicitor of the revenue for his conſent for that purpoſe, for which he is to have two guineas; and then upon counſel's motion, and on producing the conſent, the court will award the

† N.B. no conſent neceſſary

Digitized by Google

writ. If it be in vacation time, the Chief Baron, or either of the other Barons in his abſence, will upon ſuch application to him at his houſe make the like rule for a writ of appraiſement; which rule the Chief Baron in this caſe is to ſign in the book.

Proceedings in appointing the appraiſers and in executing and returning the writ.

And then the claimant's attorney is to ſerve the ſolicitor of the revenue with the names of four merchants, or other perſons of credit, ſkilled in ſuch affairs, as appraiſers; and the ſolicitor is to ſtrike out two of the names, and let two ſtand; and then he returns the ſame, with four named by him on behalf of the revenue, and of theſe four the attorney for the claimant alſo ſtrikes out two; ſo that two are left ſtanding on each ſide; and to theſe four, whoſe names are left ſtanding, and are to be lodged in the pleas office in the Chief remembrancer's office, the writ of appraiſement is to be directed; and they are to ſummon a jury, and to hold an inquiry thereon, as to the value of the ſhip, goods, wares, or merchandizes, which have been ſeized; and this writ with an inquiſition annexed to it is to be returned into the ſaid office. See the forms of the ſaid writ and inquiſition in the appendix to this work.

If the ſolicitor of the revenue neglects to return the names of appraiſers in due time, the officer of the court will ſtrike names for him, according to the method practiſed in the proceedings in the equity ſide of this court.

And

Digitized by Google

And upon this return of the writ of appraiſement, and upon a conſent for that purpoſe from the ſolicitor of the revenue as aforeſaid, for which he is alſo to have two guineas, and upon counſel's motion thereon, a writ of * delivery will be granted upon the claimant's giving ſufficient ſecurity as is uſual. And thereupon the claimant, after the rule is ſo obtained for the writ of delivery, is to enter into ſecurity by recognizance before the Lord Chief Baron if in town, if not before either of the other Barons, in double the value of the appraiſement, conditioned that the claimant ſhall perform and fulfil the judgment of the court upon any information brought, or to be brought, againſt the ſhip or goods ſeized.

Writ of delivery on return of the writ of appraiſement.

And this writ of delivery is to be directed to the ſtore keeper, collector, ſurveyor, or other officer, in whoſe cuſtody the goods ſeized are; who, upon receiving the ſaid writ, is to deliver the ſhip or goods under ſeizure to the claimant or perſon for that purpoſe named in the writ. See the form of this writ in the appendix.

To whom to be directed.

If the ſolicitor of the revenue ſhould on ſuch applications, either for a writ of appraiſement, or a writ of delivery, refuſe his conſent, then the counſel for the claimant may, on affidavit thereof, and notice given to

The proceedings in caſe the ſolicitor of the revenue ſhould refuſe his conſent either to a writ of appraiſement, or of delivery.

* In Bunb. 21. It is held that there are two reaſons for granting writs of delivery, viz delay of proſecution, and that the goods are periſhable; but that thoſe writs are diſcretionary in the court. Bunb. 74. It was granted for gold watches, the ſteel work being periſhable; and in Bunb. 30. It is ſaid that no certain rule is laid down what ſhall be called delay; but that what was moſt generally agreed upon was, that where a ſeizure was in the vacation time, and there is no information filed in the term following, if the proſecutor could have tried it that term, this would be a delay to ground a writ of delivery upon.

† not neceſſary

Digitized by Google

the ſolicitor of the revenue, make ſpecial application to the court, and they will either grant or refuſe the writ as they ſee cauſe.

Writ of delivery in what caſe refuſed.

In the caſe of Forder *qui tam* againſt John and James Wolfe, in this court, the 23d of November, 1734, a writ of delivery was refuſed, as the evidence for the ſeizure depended in a great meaſure on the manner of packing and making up the goods.

Plea to the information, and the proceedings to trial.

When the goods are ſo claimed the defendant is alſo to plead to the information; and if it be an iſſuable plea, as it uſually is, then the record is to be made up, and the after proceedings are, as on informations *qui tam* upon penal ſtatutes, pretty much the ſame with the proceedings in the common law ſide of this court between party and party.

Few informations *in rem* brought into the Exchequer, and why.

But as has been already obſerved, moſt of the offences under the act of cuſtoms being likewiſe offences under the act of exciſe, informations on ſeizures in this court are very rare; they being moſtly brought before the commiſſioners or ſub-commiſſioners of exciſe.

Offence of ſhipping native goods coaſtwiſe without making declaration, only cognizable there.

The following offence under the act of cuſtoms, however, ſeems to be cognizable only in the court of Exchequer, viz. that of ſhipping native commodities coaſtwiſe, without making a declaration to the collector, *&c.* of the contents, value, *&c.* and giving a bond conditioned to diſcharge them in the realm; by which a forfeiture of ſuch goods is incurred.

By

Digitized by Google

By the act of cuſtoms there is a proviſion, that, for the avoiding of fraudulent compoſition, no action, bill, plaint, or information be exhibited or proceeded on againſt any goods, wares, or merchandizes ſeized, until ſuch ſeizure ſhall be regiſtered and entered with the regiſter or officer to be apppointed for that purpoſe in the port of Dublin, and certified by him to be ſo entered and regiſtered; and until ſuch goods, wares, and merchandizes, be ſecured or laid up in his Majeſty's ware-houſe, at the cuſtom-houſes of the reſpective ports. And in caſe the commiſſioners of the cuſtoms ſhall be diſſatisfied, or apprehend any neglect or delay in any perſon or perſons to ſue for or proſecute in any action, bill, plaint, or information, as aforeſaid, that it ſhall and may be lawful to and for the ſaid commiſſioners to appoint any other perſon or perſons, whom they ſhall think fit, to proſecute; which other perſon or perſons ſhall be and are thereby declared to be true, proper, and lawful proſecutors or ſeizers to all intents and purpoſes whatſoever, and to whom the moiety of the ſaid ſeizures and forfeitures ſhall be due and payable, and to none other; any thing in the ſaid act, or any other law, ſtatute, uſage, or cuſtom, to the contrary thereof, notwithſtanding.

Seizures to be regiſtered and ſecured in the King's ware-houſe before any proceedings by bill, &c.

Perſons neglecting or delaying to ſue, the commiſſioners may appoint a proſecutor, who is declared the lawful ſeizer, and ſhall have the moiety of the ſeizure.

By rule 36, annexed to the act of cuſtoms, all officers whom it may concern in their reſpective places, ſhall be diligent and careful to make ſtay and ſeizure of goods, wares, and merchandizes, that ſhall be brought in, or carried out, or intended to be carried out of this realm, contrary to the laws of the ſame.

Officers to be careful to ſeize any goods brought in or carried out contrary to law.

And

Digitized by Google

Goods ſeized to be put into the ware-houſe, and there kept until releaſed by ſufficient warrant.

And by rule 37, all goods and merchandizes that ſhall be ſeized or ſtaid ſhall, preſently after ſuch ſeizure or ſtay, be delivered into the charge of the ware-houſe keeper at the cuſtom-houſe of the port where ſuch ſtay or ſeizure ſhall be made, there to remain until ſufficient warrant and diſcharge ſhall be brought for releaſe and delivery thereof.

Officers making ſeizures forthwith to acquaint the commiſſioners therewith, and to certify the ſame to the regiſter of the ſeizures.

And by rule 38, every officer, who ſhall make any ſeizure, ſhall thereupon forthwith acquaint the commiſſioners of the cuſtoms therewith, and likewiſe certify the ſame to the regiſter of ſeizures in the port of *Dublin* for the time being, together with the quantity and quality of the goods ſo ſeized, the time when, the ground whereupon he ſeized the ſame, with ſuch other circumſtances as are fit to be known, for exhibiting informations in the Exchequer againſt the ſame.

No officer to compound a ſeizure without licenſe or other lawful warrant.

And by rule 39, no officer or other perſon ſhall make any compoſition or agreement for the ſeizure or forfeiture of any goods, without * licenſe out of the court of Exchequer, or other lawful warrant firſt had and obtained.

And

* I do not find that the taking out of theſe licenſes hath been practiſed here theſe many years Lord Chief Baron Gilbert, in his treatiſe of the court of Exchequer in England, page 186, *&c.* gives the following account of them:

When a ſuit (ſays he) was commenced, even between party and party, they could not compound the ſame without leave of the court, which was the original of all fines concerning lands and tenements; and the reaſon was, becauſe the King h an intereſt in every ſuit in his court ſince there was an amerciament in the jud ment; much more in informations, where the King himſelf was party, the Ki had ſuch an intereſt that the informers could not compound without leave of th court.

Digitized by Google

And by rule 40, all licenſes, compoſitions, fines, recoveries, warrants, orders, and other diſcharges, to be had, made, or granted for or upon the aforeſaid ſeizures and informations, are to be entered with the regiſter aforeſaid, and the money or monies thereupon due and payable to the uſe of his Majeſty to be paid to the collectors of the reſpective ports.

Licenſes, &c. for forfeitures to be entered with the regiſter, and the money due to the King to be paid to the collector.

And by rule 41, all appraiſements of goods, wares, and merchandizes, ſeized as aforeſaid, are to be ſhowed and delivered to the regiſter aforeſaid, before they be returned

Appraiſements of ſeizures to be delivered to the regiſter for examination and entry.

court; but yet in many caſes, where penalties were great, and the offenders poor, it would have been exceedingly hard if the law had been inexorable, and the informer might not have compounded with the offender; and it would have ſtill been more derogatory to the honour of the Crown if the informer had compounded, and there had been no method found out to have made a compoſition for the Crown. From hence it is that there is a ſtanding privy ſeal, by which the commiſſioners of the treaſury, High treaſurer, Chancellor, Under treaſurer, Chief Baron, Barons of the Coif, and Attorney general, or any one of them, are empowered to give a licenſe to compound; provided no fine be ſet leſs than half ſo much as the informer ſhall or is to have for his part. In order to ſee that the King's part be at leaſt equal to one half of the informer's, there muſt be an affidavit made by the informer of what he receives upon ſuch compoſition, and then they go back to the officer, and the compoſition is ſet, and then it is carried to be ſigned by the commiſſioners of the treaſury, Lord High treaſurer, Chief Baron, Attorney general, or any two of them, who by the ſaid privy ſeal are entitled to compound the ſame.

This power was abuſed by offenders againſt penal ſtatutes; for after ſuch tranſgreſſions they uſed to ſet up ſham informers in order to get rid of the penalty, and ſo compound with them for a little, and diminiſh the King's part almoſt to nothing: for this cauſe it was that by the rules of the court the chriſtian and ſurnames, with the addition of the parties, are to be put into the licenſe, together with the place of their abode; the licenſe is to be ſigned by a ſworn clerk, and entered in a book before the ſame is ſigned by a Baron.

And how long this licenſe to compound is to be in force, how the compoſition ſhall be recorded, the fine rated and paid, and a writ of delivery obtained thereon, and how this writ is to iſſue where the fine is paid, and how where ſecurity is given, ſee ibid. pag. 188 to 191.

into

Digitized by Google

into the Exchequer, to be by him examined and entered. And if the goods be too much undervalued, the ſaid regiſter is to make ſtay thereof, and to acquaint ſome of the Barons of the Exchequer therewith, to the end that a review and new appraiſement may be made of the goods.

If the goods are undervalued a new appraiſement to be made.

And by rule 42, all bonds taken for ſhipping goods to the coaſts, for which certificates are returned, ſhall be delivered quarterly into the Exchequer, with the certificate thereunto annexed and endorſed alſo thereupon; and every term, after the accompt of the officers that did take them is paſt, the ſaid bonds ſhall be delivered to every perſon that ſhall ſue for the ſame, paying the uſual fees.

Coaſt bonds, for which certificates are returned, to be delivered quarterly into the Exchequer.

And by rule 43, all other bonds taken by the collectors that be expired, and all other bonds for which no certificates are returned, according to their conditions, ſhall be delivered likewiſe into the Exchequer quarterly, after the breach of ſuch conditions, that proceſs and execution may be had thereupon according to the due courſe of law.

All other bonds to be delivered into the Exchequer after the breach of conditions to be put in ſuit.

CHAP.

Digitized by Google

CHAP. XXV.

OF INFORMATIONS BEFORE THE COMMISSIONERS OR SUB-COMMISSIONERS OF EXCISE.

Commissioners of excise created in Dublin,

BY 14 and 15 Car. 2. c. 8. commonly called the act of excise, an office is created in the city of Dublin, to be called by the name of the office of excise or new impost, and to be managed by commissioners not exceeding five in number, and also a surveyor; all to be appointed by the Lord Lieutenant or Chief governors of the kingdom.

and sub-commissioners in the country,

And the like offices, and in them such sub-commissioners or collectors, are thereby directed to be appointed in all the counties of the kingdom, and in all other cities and places thereof, as the commissioners shall think fitting, to be approved of by the Lord Lieutenant or Chief governors of the kingdom.

to hear and determine offences against the act of excise.

And the commissioners or collectors of excise in their respective districts, or such other persons as shall be authorized thereto, together with such sub-commissioners or collectors, are thereby authorized to * hear and determine all offences and breaches of any clause in said act, other than such as are otherwise thereby appointed; and are,

* When a day of trial is appointed by the commissioners or sub-commissioners, the constant practice has been to give the claimant eight days notice thereof, exclusive of the day on which the summons or notice of trial is served, and inclusive of the day of trial, as on trials by *nisi prius* in the four courts in the county of the city, or county of Dublin.

Digitized by Google

upon notice or information, to proceed to examination of the matter in fact, by ſummoning parties and * witneſſes to appear before them, and examining witneſſes upon oath in the preſence of the party accuſed, if he appear; and in caſe he ſhall neglect to appear, they are authorized to proceed as if he were preſent: and upon proof of the fact, by the confeſſion of the party, or oath of one credible witneſs, they are authorized to give judgment, and iſſue a warrant for levying any forfeiture, fine, or penalty, inflicted by the act, by diſtreſs of the party's goods, or in default of ſufficient diſtreſs, to commit the party to priſon until he pay it.

Informations for penalties to be within ſix months.

But all informations for any penalty incurred by this act are to be made within ſix months after the offence ſhall be committed.

An appeal given to the Lord Lieutenant, or commiſſioners of appeals.

And it is thereby provided, that if any perſons ſhall judge themſelves aggrieved with any proceedings had by the commiſſioners, &c. it ſhall be lawful for every ſuch perſon to make his † appeal to the Lord Lieutenant, &c. or ſuch as he ſhall appoint by commiſſion under the great ſeal; who are empowered to ſend for parties and witneſſes, and all writings, &c. and to examine upon oath and determine all appeals, and confirm or reverſe all judgments given by the commiſſioners, &c. and to diſcharge any

* By 33 Geo. II. c. 10. witneſſes may be ſummoned to appear before them tho' reſiding in another diſtrict; provided that no ſuch ſummons ſhall iſſue until it ſhall appear by affidavit before one of the commiſſioners, or ſub-commiſſioners, that the perſon ſummoned is a material witneſs.

† By 33 Geo. II. c. 10. ſuch appeal muſt be brought within two calendar months after the ſentence given.

perſon

Digitized by Google

perſon committed by the commiſſioners, &c. and to mitigate all fines, penalties, and forfeitures, impoſed by them; provided that in the mitigating ſuch fine, &c. the informer may be duly encouraged for his pains and diſcovery, according to the nature of the fraud diſcovered.

Goods ſeized and not claimed in 21 days, to be ſold.

And it is thereby enacted, that if any goods ſeized ſhall not be claimed or cleared within twenty-one days, the commiſſioners or ſub-commiſſioners, &c. appointing a general day of ſale, and giving publick notice thereof, ſhall cauſe the goods to be appraiſed by two ſworn officers, or others, and afterwards ſell them by the candle to the higheſt bidder.

One moiety of the fines, &c. to the King, the other to the informer.

And of all ſeizures, fines, forfeitures, and penalties, mentioned in this act, the neceſſary charges for recovery thereof being firſt deducted, one moiety is to be to the uſe of the King, and the other to the perſon who ſhall ſeize, or give any information of and prove any breach of any clauſe therein.

The proceedings upon a ſeizure under this act.

When a ſeizure is made of any goods upon the act of exciſe, if it be in Dublin, the ſeizing officer is to bring them to the ſtores at the cuſtom-houſe, and to make a return thereof in writing to the commiſſioners, and alſo to the regiſter of the ſeizures; and if any petition be preferred to the commiſſioners, it is referred to the ſeizing officer, and on his report it either is or is not ordered to ſtand a ſeizure. Then the ſeizing note is ſent by the regiſter of the ſeizures to the clerk of the informations in the ſaid port, who, if it be a general or common caſe, either as to goods exported or imported, is to prepare an information according to the general forms; which ſee hereafter in the appendix.

Digitized by Google

If it be a caſe attended with any ſpecial circumſtances, it is to be brought to the ſolicitor or to the commiſſioners, who is thereupon to prepare inſtructions for the counſel for the commiſſioners to draw a proper information thereon. For forms, or precedents, ſee the appendix.

Seizures not claimed by the proprietor within twenty one days forfeited and may be ſold.

If the owner or proprietor of the goods do not claim them within twenty one days, the courſe is to collect all the ſeizures of the ſame kind unclaimed, and to inſert them in one information, and to enter judgment thereon for want of a claim, and then to ſell at the next general ſale to be appointed by the commiſſioners, or ſub-commiſſioners. But this method of inſerting many ſeizures in one information ſeems liable to great objections.

If a penalty ſued for there muſt be a ſeparate information.

And if on any of the ſeizures a penalty is recoverable and ſued for, a ſeparate information muſt be entered for theſe goods, and a judgment of condemnation had thereon, to be ready to be read in evidence on the trial for the penalty.

Proceedings before ſub-commiſſioners the ſame as before the commiſſioners.

If the ſeizure be in any other port than the port of Dublin, the informations and proceedings are to be the ſame before the ſub-commiſſioners as before the commiſſioners of exciſe.

The ſame proceedings in all caſes relating to the inland exciſe.

And in the caſes of brewers, vintners, ale-houſe keepers, diſtillers, or retailers of ſtrong waters, and all caſes whatſoever relating to the inland exciſe, the like proceedings are to be againſt offenders, by information, ſummons, &c.

By

Digitized by Google

By the 33 Geo. II. c. 10. it is recited that claims had been frequently made of goods ſeized by perſons who never appeared after making ſuch claims, but left the kingdom or the diſtrict where the ſeizure was made, and were not to be found, ſo as to be ſerved with a notice or ſummons for trial as the law directs; by reaſon whereof ſeveral parcels of goods had remained under ſeizure for many years, and until they periſhed, on account of not being duly condemned, to the prejudice of his Majeſty and the informer; for remedy whereof, it is thereby enacted, that in all caſes where a ſeizure ſhall be made of any goods, &c. and a claim ſhall be tendered by the owner, or proprietor thereof, or by any perſon deputed to make ſuch claim, that the perſon tendering ſuch claim ſhall at the foot thereof mention ſome particular houſe within the diſtrict where the goods are ſeized, where notices or ſummonſes ſhall be left or ſerved; and in default thereof that the claim ſhall not be deemed legal or received, but it ſhall be lawful to proceed to the condemnation of ſuch goods, in ſuch manner as by law may now be done for want of a claim; and that all notices or ſummonſes ſerved or left for ſuch claimants, with any perſon above the age of ſixteen years reſiding at ſuch houſe as ſhall be ſo mentioned or expreſſed at the foot of ſaid claims, or poſted on the door eight days before the time appointed for determining the claim, if no perſon reſides therein, ſhall be as valid and effectual as if the perſons making ſuch claim were perſonally ſerved with ſuch notices or ſummonſes.

When a claim is made, mention is to be made at the foot of the claim of ſome houſe, within the diſtrict, where notice ſhall be ſerved.

And

Digitized by Google

Diſputes concerning rights of ſeizure.

And by the ſaid act of 33 Geo. II. c. 10. reciting that, where two or more perſons have been concerned as informers or diſcoverers, ſeveral diſputes have ariſen between the parties pretending to be the real informer, and diſcoverer, to the great detriment of his Majeſty's revenue, and diſcouragement of ſuch informers; and that a juſt diſtribution of the rewards given to ſuch informers would be a great encouragement to the trade of this kingdom, it was enacted, that in every caſe, where two or more perſons ſhall claim any right to any reward, for or on account of any ſeizure, penalty, or forfeiture, they may be entitled to, the commiſſioners, or ſub-commiſſioners in their ſeveral diſtricts, who ſhall hear and determine ſuch ſeizures, ſhould hear the ſeveral claims and demands of ſuch perſons, as may think themſelves entitled to any reward, for, or upon account of any information, or diſcovery, and give or diſtribute the ſame in ſuch manner, or proportions, as they ſhould order and direct; which order, or ſentence, ſhould be final and concluſive to the ſaid parties.

Commiſſioners and ſub-commiſſioners in their diſtricts to determine the right to ſeizure, &c.

Sub-commiſſioners to take an oath before hearing a cauſe (if required) that they are not intereſted in the ſeizure.

And it is by the ſaid act enacted, that the ſub-commiſſioners, collectors of exciſe, and other perſons that may be authorized, and appointed to hear and determine the matter of complaint mentioned in ſuch information, and every of them, ſhall, if thereto required by the party or parties againſt whom ſuch information is made, take an oath that he is not intereſted, directly or indirectly, in the matter or complaint then depending before them, and that he is not to gain or loſe thereby on any account whatſoever;

Digitized by Google

whatſoever; which oath the clerk or regiſter of the ſeizures and forfeitures in the particular diſtrict is thereby authorized and required to adminiſter; and if ſuch ſub-commiſſioner, collector of exciſe, or any other perſon, to be ſo appointed ſhall refuſe to take the ſaid oaths, ſuch ſub-commiſſioner, collector, &c. ſhall be diſqualified, and rendered incapable to hear, determine, or give judgment upon the matter then depending before them, and contained in ſuch information, and all proceedings to be had before them after ſuch refuſal ſhall be null and void.

No judgment of the commiſſioners or ſub-commiſſioners of exciſe to be reverſed for informality, &c.

And by the ſaid act, reciting that the proſecutions before the commiſſioners of appeals, tho' carried on in a ſummary way, purſuant to the laws in force in this kingdom for that purpoſe, had been artfully delayed by perſons proſecuting the ſaid appeals, upon account of ſome informality, or defect of form in the proceedings, to the great diſcouragement of the proſecutors, or informers, it is enacted, that no judgment, or ſentence of the commiſſioners, or ſub-commiſſioners of exciſe, ſhall be reverſed for any informality, imperfection, or defect in form, either in the information, proceedings, or judgment brought before or given by the ſaid commiſſioners, or ſub-commiſſioners reſpectively.

Periſhable goods ſeized to be ſold twenty one days after the condemnation notwithſtanding any appeal.

And whereas it often happens that the claimants of goods ſeized by the officers of his Majeſty's revenue, on condemnation thereof by the chief commiſſioners or ſub-commiſſioners in their reſpective diſtricts, enter appeals againſt ſuch judgments of condemnation, in order to delay the ſale of ſuch goods ſo condemned as aforeſaid, that they may thereby periſh, and his Majeſty and the ſeizing officer loſe the benefit of the ſaid ſeizure, for remedy

Digitized by Google

remedy thereof, it is by the ſaid act enacted, that all periſhable goods, and commodities, which ſhall be ſeized by any of the officers of his Majeſty's revenue, or other perſon, or perſons, and condemned as aforeſaid, ſhall and may be ſold as the law directs, at any time after the expiration of twenty one days after the condemnation thereof, by order of the Chief commiſſioners of his Majeſty's exciſe, notwithſtanding any appeal brought, or to be brought, from the ſaid ſentence of condemnation, ſix days notice being previouſly given in manner herein before mentioned to the claimant, or left for him at his, or her uſual place of reſidence, and an affidavit being thereof made; and the produce ariſing by or from ſuch ſale to be accounted for and paid to ſuch perſon and perſons as ſhall be by law entitled thereto, in ten days after the time given by law for appealing ſhall be elapſed, or in caſe of any appeal in ten days after the ſentence of condemnation ſhall be affirmed, or the appeal diſmiſſed; and that in caſe of a reverſal of ſuch ſentence of condemnation, the produce ariſing by or from ſuch ſale ſhall, in ten days after ſuch reverſal, be accounted for and paid to the owner or owners reſpectively of the goods ſo ſeized and ſold, in full ſatisfaction for the goods ſo ſeized.

And the produce to be accounted for and paid to ſuch perſons as are legally entitled to the ſame.

And it is by the ſaid act alſo enacted, that all the forfeitures and penalties thereby inflicted (other than ſuch as are otherwiſe thereby appointed) ſhall and may be ſued for and recovered, levied and applied, in ſuch manner and form, and by ſuch ways and methods, as are preſcribed and appointed in and by the act of exciſe.

All forfeitures and penalties inflicted by this act to be ſued for as preſcribed by the act of exciſe.

By

Digitized by Google

Act of 33d Geo. II. continued.

By ſtatute 1 Geo. III. c. 7. the aforeſaid act of the 33d Geo. II. and all and every the clauſe and clauſes therein contained (except ſuch clauſe or clauſes as are thereby altered or repealed) are continued for the ſpace of two years from the 24th day of June 1762 and to the end of the then next ſeſſion of parliament.

Commiſſioners of appeal authorized to grant commiſſions for taking affidavits in the ſeveral counties in the kingdom.

And by the ſaid act it is enacted, that it ſhall and may be lawful to and for the commiſſioners of appeal, under their hands and ſeals, from time to time, to authorize and empower ſuch perſon or perſons as they ſhall think fit, in the ſeveral counties of this kingdom, to be commiſſioners to take and receive affidavits, concerning any cauſe depending, or other proceedings in cauſes of appeal, before the commiſſioners of appeal; and all affidavits taken as aforeſaid, ſhall be of the ſame force, as affidavits taken before the ſaid commiſſioners of appeal are, or may be; and for the ſwearing and taking of every ſuch affidavit, the perſon ſo empowered, or taking the ſame, ſhall receive a fee of one ſhilling and ſix pence, and no more.

Directions concerning the caption of ſuch affidavits.

And no affidavit taken by any commiſſioner, authorized as aforeſaid, ſhall be read or made uſe of before the commiſſioners of appeal, unleſs the commiſſioner or perſon that takes the ſame, mention in the caption thereof the day of the month when, and alſo the place and county where, the ſame ſhall be ſworn, and that he knows the deponent, or has been credibly informed that he is the real perſon mentioned and deſcribed in ſuch affidavit.

And whereas by the aforeſaid act of exciſe, or new impoſt, all goods and merchandizes ſeized for being run,

Digitized by Google

or intended to be run, were to be brought to the office of exciſe next adjoining to the place where ſuch goods were ſo ſeized, there to be detained and kept, until the ſame ſhould be condemned or diſcharged, in manner as by the ſaid act of exciſe is provided, which had, in many caſes, been attended with inconveniencies and damage to the owners of ſuch goods and merchandizes, by loſing their market, before a trial could be had thereon; and many diſadvantages had alſo ariſen, by the detention of ſhips or veſſels laden with ſuch goods and commodities, thereby preventing them from proceeding on their intended voyages; for remedy thereof it is enacted, that it ſhall and may be lawful to and for the owners of any goods, ſeized for being run, or intended to be run, and to and for the maſter or commander of any ſhip or veſſel ſeized for the breach of any of the laws of exciſe, to apply (as by law may now be done, in caſes to be heard and determined in the court of Exchequer) for a writ of appraiſement, to value and appraiſe ſuch goods and merchandizes, and ſhip or veſſel ſo ſeized; on which ſuch proceedings ſhall and may be had, as have been uſual in caſes where by law writs of appraiſement have iſſued; and that on return of the appraiſement, or value of ſuch goods and commodities, and of ſuch ſhips and veſſels, the party or parties applying for ſuch writ of appraiſement, together with two ſufficient ſureties, ſhall enter into a recognizance to his Majeſty in double the value of ſuch appraiſement, before the Chancellor, or one of the Barons of the court of Exchequer, or before ſuch perſon or perſons as they, or any of them, ſhall appoint by commiſſion to be iſſued out of the ſaid court of Exchequer, conditioned to pay ſuch appraiſed value, and all other penalties and forfeitures attending ſuch

Owners of goods ſeized, and maſters of veſſels ſeized, for breach of the exciſe laws, may apply for a writ of appraiſement, as in caſes to be heard and determined in the Exchequer.

And on return thereof, a recognizance to be entered into in the court of Exchequer.

Digitized by Google

ſuch ſeizure, in caſe the ſame ſhall be condemned; and that thereupon the chancellor, or any of the barons of the ſaid court of Exchequer, ſhall award a writ of Delivery in the uſual manner for ſuch goods and merchandizes, and the ſhip or veſſel ſo ſeized as aforeſaid.

Writ of Delivery.

Provided always, that upon the acquittal of ſuch goods and ſhips or veſſels from ſuch ſeizure as aforeſaid, by the chief commiſſioners of the revenue, or their ſub-commiſſioners, in their ſeveral and reſpective diſtricts, or by the commiſſioners of appeal (in caſe an appeal ſhall be brought) and due proof made thereof before the ſaid Chancellor, or any of the Barons of the ſaid court of Exchequer, and notice given to his Majeſty's Attorney general for the time being, that then the ſaid Chancellor, or any of the Barons of the ſaid court of Exchequer, ſhall and may order the ſaid recognizance to be vacated; and the ſame ſhall afterwards be null and void to all intents and purpoſes whatſoever.

On acquittal the recognizance to be vacated.

And by the ſaid act it is alſo enacted, that all the forfeitures and penalties inflicted thereby ſhall and may be ſued for and recovered, levied, and applied in ſuch manner and form, and by ſuch ways and methods, as are preſcribed and appointed in and by the act of exciſe.

Penalties and forfeitures inflicted by this act to be ſued for, as directed by the act of exciſe.

And the aforeſaid ſtatute, as to the ſeveral matters herein before-mentioned, is to continue and be in force for two years, from the 24th day of June, 1762, and from thence to the end of the then next ſeſſion of parliament.

Digitized by Google

The ſaid act and the ſtat. 33 Geo. II. further continued.

And by the ſtatute of 3 Geo. III. c. 21. the aforeſaid act, as alſo the ſtatute 33 Geo. II. c. 40. are further continued for two years from the 24th day of June, 1764, and from thence to the end of the then next ſeſſion of parliament.

One commiſſioner of exciſe empowered to hear and determine complaints for ſelling ſpirits without licenſe.

And by the ſaid act it is enacted, that it ſhall and may be lawful to and for any one or more of the chief commiſſioners of exciſe to hear and determine all complaints, and to levy all forfeitures that ſhall be made or incurred by or againſt any perſon or perſons ſelling * ſpirits without licenſe, in the ſame manner, and as effectually, to all intents and purpoſes, as any three of the ſaid chief commiſſioners were then empowered to do, with ſuch remedy of appeal as is therein mentioned.

The three laſt acts continued.

And by the ſtat. of 5 Geo. III. c. 16. the ſaid three laſt acts, and all and every the clauſes therein reſpectively contained, (except ſuch parts thereof as are altered or amended by this act) are continued for two years from the 24th of June, 1766, and from thence to the end of the then next ſeſſion of parliament.

The four laſt acts continued.

And by the ſtat. of 7 Geo. III. c. 27. the ſaid four acts are continued for two years from the 24th day of June, 1768, and from thence to the end of the then next ſeſſion of parliament.

* Or, by 13 Geo. III. c. 8. wine, cyder, beer, or ale, by retail without licenſe.

By

Digitized by Google

By ſtat. 11 Geo. III. c. 7. it is enacted, that no writ of *replevin*, writ of *deliverance*, or writ of *re-caption*, ſhall, at any time hereafter, without leave firſt obtained for that purpoſe from his Majeſty's court of Exchequer, be executed for any goods or chattels ſeized by any officer of exciſe, for being run, or intended to be run, without payment of duties due and chargeable thereupon to his Majeſty; or for goods and commodities detained to anſwer the payment of duties due and chargeable thereupon to his Majeſty, unleſs ſuch goods and chattels ſhall be firſt acquitted by due courſe of law.

No writ of *replevin*, *deliverance*, or *re-caption* to be executed for goods ſeized for breach of exciſe laws without leave from the court of Exchequer.

And by ſaid act the ſaid five former acts (except ſuch parts thereof as are thereby altered, repealed, or amended,) are continued for the ſpace of two years from the 24th day of June, 1772, and from thence to the end of the then next ſeſſion of parliament.

The five laſt acts continued.

And by ſtat. 13 Geo. III. c. 7. the ſaid ſeveral acts (except ſuch parts thereof as are altered, repealed, or amended thereby) are continued for the ſpace of two years from the 24th day of June, 1774, and from thence to the end of the then next ſeſſion of parliament. *

The ſix laſt acts continued.

* One can ſcarce avoid lamenting that any neceſſity whatſoever ſhould cauſe the inſtitution of a judicature, ſo repugnant to the ſpirit and genius of the Britiſh conſtitution, as that which is created by the exciſe laws; an inſtitution by which that bulwark of Britiſh liberty, a trial by jury, is partly ſubverted; and the determination of property, ſometimes to a great amount, transferred from the eſtabliſhed courts to perſons not enured to modes of legal reaſoning, unacquainted with the rules of evidence, and unreſtrained by the ſanction of an oath.

Digitized by Google

oath. Should it ever happen that such persons, warmed by an indiscreet zeal of office, or influenced by any other improper motives, should consider themselves not merely ministers of justice but servants of the Crown, whose duty it was to multiply forfeitures, and not to determine by the rules of legal proceedings, it is easy to see what infinite mischief may be done by their decisions. It is true, an appeal is given to other commissioners, from whom, considering their education and profession, redress may be expected. But when we consider the great delay and heavy expense attending such a step, and that the weight of the revenue is opposed to the prosecution of the appeal, it must be confessed that the litigation may be very unequal, and the remedy as inadequate. Nor is it an immaterial hardship upon the appellant, that, should the sentence be reversed, and the condemnation appear ever so unjust and groundless, no action will lie against the informer or seizer for a false or malicious prosecution; the sentence below being deemed, in such case, proof that there was a sufficient foundation for the prosecution. 1 Wills 232.

Another extraordinary circumstance attending those proceedings (for which necessity also is urged) is that of admitting the evidence of the informer, who is to receive a moiety of the penalty or forfeiture, in direct opposition to that well-known rule of evidence, that no person interested in a cause is to be admitted a witness; upon which ground informers upon penal statutes are constantly excluded in Westminster-hall. Stra. 316. Lord Raym. 1545. Fort. 248.

The judges appointed by those laws should ever consider that the scale of justice ought to be holden with an even hand between the Crown and the subject; that the revenues of the Crown are to be duly collected; but that those revenues, which are in fact granted for the use of the publick, were not intended to be made an engine of oppression against the fair trader; and that though the rights of the Crown are not to be remitted, those rights should be determined according to the established rules of law and justice, and not, except in cases of absolute necessity, by the evidence of persons swearing under one of the strongest temptations to perjury.

It is also to be wished on the other hand, that where the constitutional mode of proceeding hath been preserved, juries would seriously consider that the prevention or punishment of frauds in the payment of the customs is not only a benefit to the publick, by the augmentation of the revenue, but likewise to the fair trader, who, if such frauds be permitted or the punishment of them eluded, could no longer subsist.

CHAP.

Digitized by Google

CHAP. XXVI.

Of DEBTS due to the KING, and his REMEDIES for RECOVERY of THEM.

THIS being a ſubject not very diſtinctly treated of in law books, and the ſtat. of the * 33 Hen. VIII. c. 39. in England, which is not in force in this kingdom, having made ſeveral alterations in the common law there with reſpect to this matter, it will be neceſſary to conſider it with great caution, advancing nothing but what is ſupported, or ſeems to be inferred from the beſt authorities, and leaving a full diſcuſſion of the ſubject to abler hands. And for the ſake of method and perſpicuity it will be neceſſary to arrange what ſeems moſt material on this head under the following particulars, viz.

* A doubt has been ſometimes entertained whether this act be not in force in this kingdom, ſo far as it relates to the prerogatives of the Crown, by virtue of an act made here in the ſame year of that King's reign, by which the King of England, his heirs and ſucceſſors, are to have the ſtyle, title, *&c.* of Kings of Ireland, with all pre-eminences, *prerogatives*, dignities, *&c.* to the eſtate and majeſty of a King imperial appertaining. But this notion is deſtitute of any foundation; the latter ſtatute plainly being intended to change the eſtate and dignity of Lord of Ireland to that of King, without enlarging in any reſpect his legal prerogatives; much leſs thoſe which he derived under a ſtatute not then exiſting; the ſeſſion of parliament in which the Iriſh act was made having commenced the 13th of June, 1541, and ended the 20th of July following; whereas the ſeſſion of parliament in which the Engliſh act was made did not commence until 16th of January following. And ſurely whoever conſiders the ſpirit of tyranny and inconſiſtency which marks the Engliſh laws of that reign, would not be very ſtrenuous to contend for their exiſtence in this kingdom by any ſtrained inference. The one in queſtion particularly contains ſeveral clauſes which ſeem very obſcure and almoſt unintelligible.

33 Hen. VIII. ſeſs. 1. c. 1.

First,

Digitized by Google

First, of the King's debtors and his remedies againſt them.

Secondly, of the King's precedence with regard to execution.

Thirdly, of the King's prerogative with regard to the debtor of his debtors.

And as to the firſt particular, viz. of the King's debtors and his remedies againſt them, it appears by the ancient uſage of the court of Exchequer, that from the earlieſt ages the Crown claimed and exerciſed ſeveral very great prerogatives with regard to the recovery of its debts.

King could protect his debtor.

The King could grant a writ of protection to his debtor, that he ſhould not be ſued or attached until he paid the King's debt. But this was productive of great inconvenience; for, to delay other creditors, the King's debts were the more ſlowly paid. For remedy whereof, by 25 Ed. III. c. 19. Eng. it was enacted, that other creditors might have their actions againſt the King's debtors, and proceed to judgment; but not to execution, unleſs ſuch creditor ſhould take upon him to pay the King's debt, and then he might have execution for both debts. 1 Inſt. 131 b. F. N. B. 28. Dyer 328. But ſuch protection would not lie after a ſuit commenced. Hard. 26. Nor could the debtor avail himſelf of this privilege without having the writ of protection. Cr. Car. 389. And ſee Hob. 115. where it is ſaid that the reſtraint of the ſubject, as to proceeding to execution, impoſed by the ſtatute, relates to executions on lands and goods, and not of body.

And

Digitized by Google

His debtor could not dispose of his chattels by will to the King's prejudice.

And the King's debtor could not make a will to diſpoſe of his chattels to the King's prejudice; nor could his executors have adminiſtration of his chattels without permiſſion from the King, or from the juſticier, or the barons of the Exchequer; which they obtained upon giving ſecurity to pay the King's debt: and if the debt claimed by the King were a doubtful one, the King would ſometimes command the executors to retain in their hands ſo much as the ſum amounted to, till the matter was diſcuſſed in the Exchequer. Madox 663, 664, 665. 2 Ro. ab. 158 H.

King could ſeize the chattels of his debtor deceaſed.

If one died indebted to the King, and it were doubtful whether the chattels of the deceaſed would amount to ſatisfy the debts due to the King and to other perſons, it was uſual for the King to ſeize into his hands the chattels of the deceaſed, in order to have a ſatisfaction of his debt, before any other creditor of the deceaſed was paid, or the chattels were eloigned, or applied to any other uſe. But when he ſo ſeized them, he allowed a competent part for the decent funeral of the deceaſed. Madox 665. See magna charta, c. 18. 2 Inſt. 32.

King could have execution againſt body, lands, and goods.

At common law, if a common perſon obtained a judgment for debt or damages, he could not have the debtor's body or his lands during his life in execution; but the body, * lands, and goods of the King's debtor were liable. 3 Co. 12.

* But in Palm. 167 it is doubted whether it is not merely by the cuſtom of the court of Exchequer that lands can be extended for the King's debt, and not upon the judgments of any other courts, except the debt be eſtreated into the Exchequer.

Digitized by Google

Againſt heirs, terre-tenants, executors, &c.

The King might levy his debt not only againſt the party himſelf, his lands and goods in his own hands, but in the hands of his heirs and terre-tenants, and againſt his executors and adminiſtrators, or if he had no executors or adminiſtrators, then againſt the poſſeſſors of his goods. Dyer 160. a. 11. Co. 93. a. Bunb. 322. But this muſt be underſtood, as to goods, where they were not aliened *bona fide* before the *teſte* of the execution. 8 Co. 171.

Proceſs *ad computandum* lay againſt terre-tenants.

And therefore where an officer and accomptant of the King died in arrear to him, the ſheriff having returned that there were no executors or adminiſtrators, proceſs *ad computandum* iſſued againſt the terre-tenants of his lands, although no judgment had been againſt himſelf in his life time. Dyer 324. And in Plowd. 321 a. where this caſe is cited, it is laid down ſtill more generally, as held therein, that if any perſon be accomptant to the King, or if any money, goods, or chattels perſonal of the King come to the hands of any ſubject by matter of record or matter in deed, the lands of ſuch ſubject are by the courſe of the Exchequer charged with the debt, and ſubject to the King's ſeizure, in whoſever's hands they ſhall come afterwards, whether it be by deſcent, purchaſe, or otherwiſe; and that the law of the Exchequer is conſidered in ſuch caſe as the general law of the realm, and not as the law of the Exchequer only. But this ſeems to be laid down too largely, and is not at all warranted by the determination in Dyer *.

* See Favel's caſe in the time of Ed. III. Dyer 160. a. where it being found that, after he was appointed a collector, being *languidus in extremis*, he alien'd his lands, goods, &c. and died without heirs or executors, proceſs *ad computandum* was iſſued againſt the terre-tenants and the poſſeſſors of his goods. But it ſhould ſeem that this was on a ſuppoſition that the alienation was in order to defraud the King.

A *ſcire*

Digitized by Google

A *ſcire facias* iſſued againſt commiſſioners of prize goods, grounded upon an inquiſition, whereby they were found indebted to the King in a ſum of money for prize goods, and to ſhow cauſe why the King ſhould not have execution for this debt. And upon demurrer it was inſiſted that a *ſcire facias ad ſatisfaciendum*, which is a judicial writ, does not lie before the debt be determined upon record; for that it is uncertain what the debt is, by reaſon of the allowances that are to be made; that * proceſs of the pipe would not lie, which is not ſo ſtrong a proceſs; (for, by this courſe, body, goods, and lands might be taken into execution, when perhaps nothing was due;) and that the auditing and ſtating accounts is a judicial act, which ought to be done by the Barons, and not by inquiſition. And by Hale, Chief Baron, a *diſtringas ad computandum* is the uſual proceſs. Hard. 228.

Scire facias ad computandum the proper proceſs where the King's debt is not determined.

All debts to the King on record bind the debtor's lands from the time they are contracted: for all lands being held mediately or immediately from the King, when any debt was recorded of any perſon it laid the eſtate as liable to ſuch debt as if it had been a reſervation on the original patent or firſt feudal donation. And therefore as the King

King's debts on record bind the debtor's lands, Gilb. Exc. 88. 122.

* Summons of the pipe iſſued againſt a man to levy £500 upon a *ſuper* ſet upon him by a colle or; and a motion was made to ſuperſede it, becauſe it could not be pleaded to, and it was ſuperſeded: for, by Lord Chief Baron Hale, ſummons of the pipe ought not to iſſue but for a debt upon record, or a debt ſtated and determined, and not for money due by matter *in pais*, as this caſe is; wherefore if a collector in chief charge his under collector in account, or an accountant charge another together with himſelf for goods of the King's ſold to him, and not paid for, ſummons of the pipe ſhall not iſſue in thoſe caſes, but a *ſcire facias*, or a *diſtringas ad computanaum*, to which the party may plead; for that theſe debts are not debts of record, but ariſe upon the accountant's charge only; and ſo here; and a *ſcire facias ad computandum* was awarded. Hard. 322. Same point determined, Hard. 504.

Digitized by Google

could ſeize the land for non-payment of the reſerved rent or ſervice, ſo he could ſeize it for any debt with which it was charged.

A truſt in fee extendible for the King's debt.

A truſt in fee of lands is liable to the King's debts by the courſe of the Exchequer; for the writ of *extendi facias* for levying the King's debts is of the debtor's lands, or of any land of which any other perſon was ſeized to his uſe; tho' ſuch an eſtate does not eſcheat in the caſe of felony, becauſe there is a tenant to anſwer the Lord's ſervice. Hard. 495. 3 Chan. rep. 35. See 1 Vent. 132.

Or a term attendant on the inheritance.

Where a term is attendant on the inheritance, if the King extends the inheritance, he ſhall have a right to the term; but if the term be mortgaged to one who has no notice of its being attendant on the inheritance, the mortgagee ſhall hold it againſt the King. Prec. Cha. 125. 2 Vern. 389.

Where land granted by the King ſhall not be extended for a debt due to him.

The King's receiver being indebted to him for arrears of his receipts, and being ſeized in fee of land, conveyed it in fee to I. S. who conveyed it to the King in fee; and the receiver took it again from the King to him and his heirs; and afterwards the receiver became further indebted upon his account to the King. It was held in the court of wards that this land was not extendible for any of the ſaid debts; becauſe the land itſelf was never chargeable in itſelf, but in reſpect of the perſon who was debtor, as in the caſe of a ſtatute ſtaple; ſo as, when the King took the lands, the debt was not thereby diſcharged, but might be recovered againſt the debtor himſelf; but the land in the King's hands was not chargeable; and then when the King conveyed the land over he could not againſt his own conveyance charge the land. But the Chief Baron doubted it;

Digitized by Google

it; and therefore the court decreed for the diſcharge of the land, without prejudice to the uſe of the Exchequer for the King's debt there. Hob. 45. But quere of this caſe, for it ſeems a ſtrange determination.

Lands conveyed with power of revocation extendible.

A perſon being ſeized of lands made a conveyance with a power of revocation, and afterwards died indebted to the King, and without having revoked it; it was held that the land was extendible for the debt. 2 Roll. 295. Godb. 289.

King reſtrained by *magna charta* from ſeizing lands if goods ſufficient.

But it was reckoned an abuſe of the feudal prerogative if the King ſeized the lands or perſon of his debtor where there were goods ſufficient to anſwer the debt: wherefore it was enacted by *magna charta*, c. 8. and declared as part of the liberty of the ſubject, that the King or his bailiffs ſhould not ſeize any land or rent for any debt, whilſt the chattels of the debtor are ſufficient to render the debt, and the debtor is ready to ſatisfy it.

Which introduced the ſummons of the pipe,

By theſe means the abuſe of the prerogative was totally hindered, and the King could not levy his debt on the land, whilſt there were goods ſufficient to anſwer it. From whence it became neceſſary to iſſue the ſummons of the * pipe againſt the debtor, which is a proceſs againſt the goods only; and when any thing was *nihill'd* on the ſummons of the pipe, then, and not before, the ſecond remembrancer's proceſs, ſometimes called the long writ, or prerogative proceſs, iſſued, which is againſt body, goods, and lands, *&c.* heirs and executors. Gilb. Exc. 124.

* But though the nature of the proceſs of the pipe is ſo clearly pointed out, in this kingdom the ſummons of the pipe is againſt body, goods, and lands. When this practice commenced, which ſeems to have been originally through the miſtake or ignorance of the officers, I have not been able to learn.

And

Digitized by Google

Alteration of the law in this reſpect by 33 Hen. VIII. c. 39.

And thus the law ſtood in England until the 33 Hen. VIII. c. 39. by which it is enacted, that every ſuit for the King's debts, recognizances, obligations, or ſpecialties, ſhall be made in the ſeveral offices and courts of his Exchequer, and other courts of revenue, under the ſeal of the ſaid courts, by *capias*, *extendi facias*, *ſubpœna*, attachment, and proclamation, if need ſhall require, or any of them, or otherwiſe, as unto the ſaid courts ſhall be thought by their diſcretion expedient for the ſpeedy recovery of the King's debts.

From the time of making this ſtatute of 33 Hen. VIII. c. 39. Lord Chief Baron Gilbert ſays the practice commenced of making *capias*, *fieri facias*, or extents, at the diſcretion of the court, to levy the King's debts.

Prerogative writ ſuppoſed to be introduced by the ſtatute. 2 Inſt. 19

Lord Coke ſays, that after this ſtatute, the uſual proceſs to the ſheriff was, "that you diligently, by the oaths of good and lawful men of your bailiwick, *&c.* inquire what goods and chattels, and of what price, he the ſaid I. S. had in your bailiwick, *&c.* and you ſhall take them all into our hands, to the value of the debt aforeſaid, and thereout cauſe to be made the debt aforeſaid, *&c.* and if it ſhall happen that the goods and chattels of the aforeſaid I. S. ſhall not be ſufficient for the payment of the debt aforeſaid, then you ſhall not omit by reaſon of any liberty, but you ſhall enter it, and by the oaths of good and lawful men diligently inquire what lands and tenements, and of what yearly value, the ſaid I. S. had or was ſeized of in your bailiwick aforeſaid, *&c.* and all and ſingular the aforeſaid, in whoſe hands ſoever they ſhall be, you ſhall extend and take into our hands, *&c.* and you ſhall take the aforeſaid I. S. ſo that you have his body to ſatisfy us of the debt aforeſaid, *&c.*"

But

Digitized by Google

But Lord Chief Baron Gilbert, with great reaſon, thinks this writ might have been uſed before the ſtatute, without any violation of *magna charta*; becauſe it ſeems ſo contrived that an inquiſition ſhould be found whether the debtor had any goods and chattels; and if upon the inquiſition there were not ſufficient found, then to extend the land, and take the body; and that therefore it ſeems to be a writ that was uſed in caſes of neceſſity, before 33 Hen. VIII. but that ſince that ſtatute there may be a *capias*, *levari*, or *extent*, without any inquiſition touching the goods.

But ſeems to be before. Gilb. exc. 128.

There are, according to L. C. J. Holt, five ſeveral ſorts of executions for the King. Firſt a *capias ad ſatisfaciendum*, which commands the ſheriff to take the body of the debtor. Secondly, a *fieri facias*, to ſell his goods. Thirdly, an *extendi facias*, to extend his lands, &c. Fourthly, a writ, called the * long writ, compriſing all the former. Fifthly, a *levari facias*, to levy the rents, iſſues, and profits of the lands, as in caſe of forfeiture of iſſues or of profits to be taken upon an outlawry; and upon this latter writ only, the cattle of a ſtranger *levant* and *couchant* upon the land may be taken. Comyn 51. 1 L. Raym. 306.

The ſeveral executions for the king.

The writ of *extendi facias* or extent commands the ſheriff to ſeize the lands and tenements, goods, chattels, and debts of the debtor, and to appraiſe them and extend and take them into the King's hands, until he ſhall be ſatisfied his debt; with a proviſo that he ſell no goods, until further proceſs. It is ſaid to be grounded on the aforeſaid ſtatute of 33 Hen. VIII. and is ſo mentioned to

The nature of the extent for the King.

* But note, this ſeems to be a different writ from the long writ, or treaſurer's remembrancer's proceſs.

be,

be in the end of the writ. It iſſues from the equity ſide of the court, which is always open, and uſed formerly to ſit much longer than it does now. When the court does not ſit, they are made out, in England, upon the *fiat* of a Baron, which is in the nature of an award of the court, and they cannot be ante-dated before the *fiat*. 2 Strange 749. Bunb. 62.

Bonds to the Crown when introduced. Gilb. Exc. 96, 165.

Before the time of Hen. VIII. there were few bonds given to the Crown. But recognizances might be taken to the Crown; for they were matters of record, and the King could not take but by matter of record. But towards that time, as the revenue increaſed, and merchants were obliged to make payments, the cuſtomers and collectors received bonds from the parties to the King. Theſe collectors were no more than bailiffs or receivers, and not as juſtices between the King and the party; and therefore the acknowledgements before them were not in a court of record; and there is this difference between them and bonds of record, that theſe were immediately levied by *levari*; but thoſe not of record could not be levied by *levari*, but a *ſcire facias* was to iſſue thereupon.

Difference between bonds to the Crown and recognizances. Gilb. Exc. 97.

And the reaſon of the difference is, that where an obligation is acknowledged in a court of record, ſuch recognizance is the ſame as a judgment, the conuſor being perſonally preſent, and the court ſuppoſed to know him as much as a defendant againſt whom they give judgment. And hence it is that the *levari* iſſues, and all the other prerogative proceſs; and that the debt cannot be diſcharged until there be a receipt upon record. But where the King's miniſterial officer takes an obligation to the King, ſuch obligation is not of record; but when the officer delivers ſuch obligation into court, the time of ſuch delivery

Digitized by Google

very is recorded; ſo that if the obligation be juſt and the conuſor has nothing to ſay againſt it, nobody can controvert the time of its *lien*; becauſe the delivery is of record, and therefore it ought to bind from that time. But the obligation is no more than a warrant of attorney for the miniſterial or other perſon to delivery it of record; for being an act in *pais*, and not of record, the conuſor may come in upon the return of the *ſcire facias* and traverſe the obligation; but in this it differs from a warrant of attorney; for if a man forge a bond, and warrant of attorney, and then confeſs judgment, the defendant can never deny the deed, if a *ſcire facias* iſſue after the year; but in this caſe there is no judgment upon the bond, for the bond is only delivered on record, and the judgment ariſes only on the *ſcire facias*.

Proceedings on bonds or recognizances to the Crown.

When a bond or recognizance to the Crown is to be put in ſuit, it is to be lodged in the Chief remembrancer's office, and from the time of delivery of the former (which is to be recorded by him) it binds the lands of the obligor. And thereupon *ſcire facias* iſſues thereon, directed to the proper county, or two to the ſheriffs of the city of Dublin, let the place of abode of the party be where he will, to ſummon him to ſhow cauſe, if any he can, why execution ſhould not be.

On *ſcire feci* returned, rules to plead.

If the ſheriff returns a *ſcire feci*, then the officer is to enter rules to appear and plead thereon, as on an information; and the proceedings are as on ſuch writs in ſuits between party and party; with this difference, that when the three firſt rules to plead are expired, a fourth rule is entered, viz. that the defendant plead in four days, or that judgment be entered againſt him, without further motion;

and if no plea be filed in these four days, judgment may be entered without procuring a certificate of no plea.

On two *nihils* returned, rule for judgment.

If the sheriff returns two *nihils*, the officer will upon application enter a rule of course for judgment, if no plea in four days, which is the *quarto die post*, for two *nihils* are deemed presumptive notice, and equal to a *scire feci*; and if no plea be filed in these four days, he will enter the judgment.

No judgment usually entered.

But upon these *scire facias*, no judgment is usually entered, which is less prejudicial to the debtor, for then he may obtain leave to plead; and it is as beneficial to the King to have an extent upon the bond or recognizance itself as upon a judgment.

Leave may be given to plead after judgment.

If judgment should go upon two *nihils*, and the defendant makes affidavit that he has a reasonable and just defence to make, and that he is ready to make it, the court will, upon motion, give him liberty to plead *.

Upon defendants pleading, process to stay. Gilb. Exc. 173.

If the defendant plead to the *scire facias*, process is to stay till the plea is determined; but if goods or lands be extended, process is not to stay without special order of the court, upon bringing into court the goods or the value

* In the case of the King against Thompson, in this court, 26th November 1748, and 29 June 1750, the defendant having executed a bond to the King for performance of covenants to keep barracks in repair, writs of *scire facias* issued thereon to the sheriffs of the city of Dublin in the usual manner, and two *nihils* being returned, the King had judgment, and a writ of *levari* issued; but it appearing to the court upon a motion for the defendant, that the defendant lived at Waterford, and therefore was not summoned, and the bond not being for the payment of money but for performance of covenants, which appeared by affidavits to have been performed, the court ordered the judgment and *levari* which issued thereon to be set aside, and that the defendant should be at liberty to plead to the *scire facias*, although the application was made upwards of four months after the *levari* had issued.

thereof,

Digitized by Google

thereof, or the meſne rents of the lands, or giving ſecurity to abide the order of the court; and the reaſon is, becauſe when a man pleads in diſcharge of the *ſcire facias*, he pleads in diſcharge of the debt, and therefore the debt is in ſuſpenſe till the plea is determined; but where the lands and goods are extended, and he comes in to plead, it is to diſcharge an execution executed; and therefore nothing is to be ſtay'd, until ſecurity be given to anſwer the goods or the meſne profits of the lands.

Proceedings upon bonds with warrant.

If a bond be entered into to the Crown, with a warrant of attorney to confeſs judgment, the warrant is brought to the officer, who enters a conſent in his book of judgments, that judgment be forthwith entered up for the King, and that execution ſhall iſſue: In this caſe there is a *ſcire facias* made out, ſigned by the officer and filed, but never ſealed; which is in the nature of a declaration at common law, and the judgment is made up as thoſe on the plea ſide by *cognovit actionem*; becauſe they would not ſtay the return of two *ſcire facias*, to delay the King's execution, nor clog the rolls with two writs and two returns from the ſheriff.

Proceedings upon an extent.

Upon the writ of extent the ſheriff is to hold an inquiry in order to find the lands, *&c.* and the yearly value thereof by examination of witneſſes; which finding he is to return, and that he hath ſeized the lands into his hands for his majeſty's uſe.

And *levari* in England. Gilb. Exc. 170.

And immediately upon his return, by the practice in England, a *levari* iſſues, to levy the meſne rates half yearly, or oftener if it be required, until the principal debt, with coſts and damages, as the court ſhall think fit,

Digitized by Google

be ſatisfied; but the party may come and plead at the return of the extent, before any profits be actually levied.

How the lands are put in charge. Gilb. exc. 171.

And when the *levari* goes out, the remembrancer's office writes the lands in charge to the pipe, and from thence forward they are in charge on the ſummons of the pipe, and the ſheriff returns the iſſues and profits of them annually; ſo that it ſeems, that upon the firſt iſſues he anſwers to the *levari* before the Barons, and thoſe iſſues are drawn out into the pipe, in order to charge the ſheriff, that the next year the ſummons of the pipe may go out for the ſame iſſues, becauſe the lands are then within the complete charge of the ſheriff.

Practice here by granting *cuſtodiams.*

But the practice here is very different; for upon the return of the extent (which is here called a *levari*, and ſeems to be confounded with it) the ſolicitor for the Crown is to move for a *cuſtodiam* and injunction; and the court will order that the clerk of the pipe do make out a *cuſtodiam* of the lands, which is thereupon made to the collector of the diſtrict, or of late more uſually to the ſolicitor, on account of the frequent changes of the collectors, in truſt for the King, during the King's pleaſure, at the yearly rent of * five ſhillings; and the court will at the ſame time order that the chief remembrancer do iſſue an injunction, for putting the cuſtodee or his aſſigns into the poſſeſſion of the lands. But for the further proceedings hereon, ſee chap. 30. of *cuſtodiams*.

* It is likewiſe uſual to inſert in the *reddendum*, theſe words, "over and above the yearly rent and arrears of the premiſes payable thereout to the King," but the inſertion of theſe words ſeems to ariſe either from confounding the *cuſtodiams* granted upon theſe *levaris*, with thoſe granted upon ſeizures for arrears of the King's rents, or from a caution leaſt the lands ſhould be ſubject to a crown or quit rent.

But

Digitized by Google

But in England, by the ſtat. of 33 Hen. VIII. 39 a bond to the King is in the nature of a ſtatute ſtaple, and the Crown may iſſue an * immediate extent upon it, at any time within a year after the bond was given. But if it be doubtful whether the condition be forfeited, or if it be proſecuted after a year, a *ſcire facias* iſſues. But the crown may, even in ſuch caſes, have an immediate extent, upon an affidavit made before a Baron, that the King's debt is in danger.

Bonds to the Crown in England in nature of ſtatutes ſtaple, and immediate extents go.

If goods be ſeized, and the extent returned, the court will, upon motion of the ſolicitor for the Crown, award a writ of † *venditioni exponas* to ſell them. But Lord Chief Baron Gilbert ſays, that in England, on return of the extent, a rule of ſix days is to be given; and if the defendant do not appear at that time, then a *venditioni exponas* is iſſued; but that if he appear and plead, a further rule of four days is given.

Venditioni exponas, when to iſſue.

If two extents iſſue againſt a perſon bearing different *teſtes*, and be delivered to the ſheriff, and that which bears the lateſt *teſte* be delivered firſt to him, he ſhould take an inquiſition on that which bears the earlieſt *teſte*, and make the common return upon it, viz. that he had ſeized the goods found into the hands of the King; and the ſame goods being found by the ſecond inquiſition, to

If two extents iſſue inquiſition ſhould be held on that of the firſt *teſte*.

* It is ſaid that thoſe immediate extents have been formerly, upon particular occaſions, iſſued in this kingdom; but as they are founded, as has been already mentioned, upon the 33 Hen. VIII. Eng. the legality of ſuch proceeding here may be juſtly queſtioned.

† In England, terms for years are ſold by *venditioni exponas*, upon extents for the King's debts. Bunb. 105. But ſee Bunb. 71. where ſuch writ was refuſed.

return

return upon that, that they were seized upon the first inquisition; otherwise, if he return upon both inquisitions, that he has seized the goods, a *vendidioni exponas* might issue upon each, and he may be liable to be charged with both. Bunb. 323.

King's debt prior on record binds the lands of the debtor. Gilb. Exc. 19.

As to the second particular, viz. Of the King's precedence in executions. If the King's debt be prior on record, it binds the land of the debtor into whose hands soever it come; because it is in the nature of a feudal charge on the land itself, and therefore must subject every body that claims under it. But if the land were alien'd in the whole, or in part, as by granting a jointure, before the debt contracted, such alience claims prior to the charge, and therefore is not subjected to it.

But if the subject's debt on record be prior, the King's extent shall be preferred, unless it be after a *liberate*, ibid.

But if the subject's debt be by judgment or recognizance, and prior to the King's debt, and the King extend the lands first, the subject shall not by any after extent take them out of his hands: But if such judgment be extended, and possession delivered to him by a *liberate*, he shall hold it discharged from the King's debt. But if the King's extent come before the possession by *liberate*, the King's extent shall be preferred, and the subject wait till the King's debt be satisfied.

The reason of the difference. ibid.

The reason of the difference is, because the King's debt is in the nature of a feudal charge, which, if it come on the lands before the property of them is altered, seizes them as it might have done for the original service at first imposed; but if there had been a lawful alienation before such debt, there it is not the feud of the tenant, and therefore such charge cannot affect it; therefore if there was a precedent judgment or recognizance and a *liberate* pursuant

Digitized by Google

purſuant, before the King's extent comes down, there it cannot charge the lands, for the property is completely altered by the extent of the ſubject, which relates to the time that the judgment was firſt given, or recognizance acknowledged, and is only an execution of it; but if the King's extent had come before the *liberate*, he had charged the land whilſt it was in the hand of his debtor, and then his charge would be ſatisfied, as if it had been in the firſt feudal donation. And the lien upon lands by the ſubject's debt came in by the ſtat. of Weſt. 1. for before that the judgment did not bind the land; but the King's debt bound the land before that ſtatute, and the ſtatute does not touch the prerogative; and therefore the King has a power to levy upon the lands, notwithſtanding the preceding lien by judgment; and therefore may ſeize lands that are bound by a preceding judgment, whilſt the lands are in cuſtody of the law on the *elegit*, and before the poſſeſſion is actually delivered to the creditor, as a ſatisfaction for his debt.

In what caſe the King ſhall extend but a moiety. Gilb. Exc. 94.

If A obtain judgment againſt B, and B afterward enfeoff C of his land, and then A aſſigns his judgment to the King, in this caſe the King ſhall extend but a moiety of the lands in the hands of C. But if A had aſſigned the judgment to the King, before B had enfeoffed C, the whole lands had been liable; for the King by his prerogative could extend all the lands of the debtor for his debt; but the feoffment being made to C, before the aſſignment of the judgment to the King, they were the lands of C before B became indebted to the King, and therefore the prerogative of the King, which makes it a feudal charge, never affected thoſe lands, but they are ſubject to the ſame lien only to which they were when it was only a debt due to A. 3 Leon. 239. 4 Leon. 10.

A executed

Digitized by Google

Where the King's debt shall not be preferred.

A executed a bond to B, and C afterwards obtained two judgments of the same term against A, and B. assigned his debt to the King; C took out two *elegits* upon his judgments, and extended both moieties of A's lands; and then process issued out of the Exchequer for the debt assigned to the King; and the question was whether the King's debt should be preferred in this case, and it was determined that it should not. But the reasons upon which the determination was founded don't appear clearly from the reporter. One reason assigned is, that the King's debt shall be preferred when it is in equal degree, otherwise not. But this is a distinction that does not seem to hold universally. Another reason which seems a better one is, that the subject's title was prior to the King's, and executed. But it was likewise said that the 33 Hen. VIII. c. 39. which enacts "that the King's suit shall be preferred before any person's, and that he shall have execution before any person; so that his suit be commenced before the other person's," abridged the prerogative in this respect. Hard. 23, &c.

The King's execution binds goods from the *teste*.

As to the King's execution of goods, it relates to the time of awarding thereof, which is the *teste* of the writ, as it was in the case of a common person before the statute of 29 Car. II. c. 3. Eng. and 7 Will. III. c. 12. Irish. For though by that statute no execution shall bind the property of goods but from the time of the delivery of the writ to the sheriff. Yet, as this act does not extend to the King, an extent of a later * *teste* supersedes an execution of the goods by a former writ.

* Bunb. 39, admitted, per curiam, that an extent binds from the *teste*. 2 Strange 980. S. P.

And

And therefore, where an extent iſſued upon a ſtatute ſtaple at the ſuit of a ſubject, and the ſheriff ſeized the conuſor's goods, and after the day of the return, but before an actual return, and before a *liberate*, a prerogative writ iſſued againſt the conuſor for a debt due to the King, it was preferred. Dyer 67. b. 2. Ro. ab. 158.

Though after an extent at the ſuit of the ſubject, no *liberate* being given.

But a ſale of a chattel, *bona fide*, by the King's debtor ſhall bind the King, ſo that his extent ſhall not reach it in the hands of the alienee. 8 Co. 171.

But not if alien'd *bona fide*.

A *fieri facias*, teſted 3d April, iſſued againſt a perſon, by virtue of which the ſheriff levied the goods, &c. but before a ſale, or the return of the writ, an extent came to the ſheriff at the ſuit of the Crown to levy the goods of the debtor, bearing *teſte* 2d May; the ſheriff returned the ſpecial matter, on the *fieri facias*, and likewiſe upon the extent, in which it was ſaid that the debtor was poſſeſſed of the goods upon 30th April; upon application to the court of Exchequer, he was obliged to amend his return, tho' there had been an inquiſition taken; and in this caſe it was taken for granted that tho' the goods were levied by virtue of the *fieri facias*, three days before the *teſte* of the extent, yet that was no bar to the Crown. But the reporter adds a quære, if they had been ſold, becauſe then execution had been executed. Bunb. 8.

An extent will bind goods ſeized upon a *fieri facias*, but not ſold.

An extent having iſſued againſt a tenant, the landlord diſtrain'd for rent; the next day the extent was executed, and the inquiſition found the goods then in the poſſeſſion of the tenant; it was moved that the landlord might have the benefit of the ſtat. of 8 Ann. for his rent, notwithſtanding

An extent will take place of a landlord's remedy under ſtat. of 8 Ann. Eng.

Digitized by Google

ſtanding this extent; but it was denied by the court. Bunb. 269.

Goods diſtrained but not ſold liable to the King's extent, otherwiſe of goods pawned.

Upon a demurrer by the Attorney general to a plea to an inquiſition upon an extent, the queſtion was, whether the goods in the inquiſition were legally ſeized into the King's hands, having been two days before diſtrain'd for rent, but not ſold. And it was determined by the court of Exchequer that they were, for that by the diſtreſs they are in the cuſtody of the law, and the property of them is not altered; and till an alteration of the property they are liable to an extent at the ſuit of the Crown. But it was admitted that it would be otherwiſe of goods pawn'd before the *teſte* of the extent, becauſe the pawning is an alteration of the property. 2 Veſey 288.

Extent being teſted on the ſame day as an aſſignment by commiſſioners of bankruptcy ſhall be preferred.

So where a man being indebted to the King by bond, an extent iſſued againſt him, and an inquiſition found him poſſeſſed of goods; a third perſon pleaded that a commiſſion of bankruptcy had iſſued againſt him, that the goods were ſeized by virtue of a warrant from the commiſſioners, and that the commiſſioners had aſſigned to the aſſignees, on the day of the *teſte* of the extent; on demurrer, judgment was given for the King; becauſe the extent and aſſignment being on the ſame day the extent is to be preferred. Trem. P. C. 637. 2 Show. 481. Bunb. 33.

The goods of a collector of the land tax ſeized by the commiſſioners liable to the King's debt in preference to the aſſignees under a commiſſion of bankruptcy iſſued againſt him.

The collector of the land tax being indebted to the commiſſioners of the land tax, and having become a bankrupt, they by virtue of a power given them by act of parliament iſſued their warrant, by which his goods were ſeized, and an aſſignment was in three days afterwards made of his effects by the commiſſioners; and on an action of trover brought by the aſſignees, it was held by lord Hardwicke

Digitized by Google

Hardwicke and the court of King's-bench, that the collector was to be considered as the King's servant, and indebted to him, it being the King's money that he collected, and the allowance to him being made by the King; and that tho' the warrant was not to be considered as equal to an extent, so as to bind the goods from the date, yet that until an assignment the property was in the bankrupt, and the crowns hands were upon the goods, and created a lien before the assignment; and that the Crown was not bound by the acts relating to bankruptcy, not being named; and that upon this seizure all the right which the assignees had was to redeem the goods upon payment of the money, they being a pledge in the hands of the commissioners for that purpose. 2 Strange 978.

Assignees of bankruptcy not relieved against an extent, but on paying a debt due to the Crown by the bankrupt's father, which he had promised to pay.

A deputy post-master became indebted to the Crown, and an extent issued against him; he afterwards became a bankrupt, and the assignees under the commission obtained an order, that on payment of what was due upon his bond, the extent should be discharged: upon motion to discharge the order, it appeared by affidavit that the bankrupt had promised also to discharge a debt due from his father (who was also deputy post-master and was since dead) to the Crown, and for which a *diem clausit extremum* had issued, and therefore it was held by the court that the assignees who stood in his place ought not to have the benefit of this order, unless they would pay both debts pursuant to his promise. Bunb. 337.

Of the preference of the King's debts by executors.

It has been already observed that if the King's debtor died, his debt was to be preferred in payment: But this must be understood, where the King's debt is on record; and therefore the King must be first satisfied debts by judgments, statutes, recognizances, fines or amerciaments,

Digitized by Google

in his courts of record; and it would be a *devaſtavit* in the executor to pay other debts before them. But debts due to the King, not of record, ſeem not neceſſary to be ſatisfied before debts due to other perſons, where there is no notice given of the King's debt; as where money is due to the King for wood, tin, eſtrays, *&c.* or for amerciaments in a court baron or other court not of record. Comyn 438.

The King might take an aſſignment of a debt due to his debtor. Gilb. Exc. 167.

As to the third particular, viz. of the King's prerogative with regard to the debtors of his debtors, it is to be obſerved that the King, by an ancient prerogative, could take from his debtors an aſſignment of any of their debts; which was not allowed in the caſe of a common perſon; becauſe it would have promoted maintenance; but it was not preſumed that the King would maintain an unjuſt ſuit.

Or extend ſuch debt in aid of his debt. Madox, 666.

And by another prerogative, if the King's debtor was unable to ſatisfy the King's debt out of his own chattels, the King could betake himſelf to any third perſon, who was indebted to his debtor, and recover of ſuch third perſon the debt due from him, in order to get ſatisfaction of the debt due to the Crown; and upon ſuch recovery had, ſuch third perſon was acquitted againſt the King's debtor, and the King's debtor was acquitted againſt the King *de tanto.*

The King's debtor might have aid of the Crown to recover his debts. Madox 668.

Likewiſe, by the ancient uſage of the Exchequer, the King's debtors or accomptants were wont to have writs of aid, whereby to recover their debts of ſuch perſons as were indebted to them, in order to enable them to anſwer the debts they owed to the King.

And

Digitized by Google

And the King may likewiſe have extents againſt the debtor of the debtor of his debtor, and ſo on as far as debts can be found; becauſe the ſecond debtor, when his debt is ſeized, is a debtor to the King, ſince the King can ſeize a *choſe in action*, and then the King may have an extent to ſeize the *choſe in action* due to ſuch ſecond debtor. But ſee 4 Inſt. 115.

King may have extents in aid *ad infinitum*.

But no obligation, recognizance, *&c.* for performance of covenants, though it be forfeited, or for any other matter than a debt due, can be aſſigned to the King by his debtor. 4 Inſt. 115. 4 Leon. 9.

Bonds for performance of covenants.

And it is ſaid that theſe aſſignments of debts to the King are not favoured in law, when the King's immediate debtor is able to pay the debt; for by the aſſignment at the King's ſuit, the body, lands and goods of the debtor to the King's debtor are liable to the King; whereas at the ſubject's ſuit, he could have had but his body, or goods, or half his lands. 4 Inſt. 115. And ſee 2 Leon. 31. 4 Leon. 80.

Aſſignments of debts to the King not favoured.

When any debt is found by † inquiſition, and ſeized into the King's hands, either at the proſecution of the King, or in aid of his debtor, proceſs of *ſcire facias* is to be awarded againſt the party; which *ſcire facias* ſets forth the original debt, and then ſets forth the inquiſition taken of the debt due to the King's debtor, by virtue of ſuch extent in aid.

Scire facias to iſſue for ſuch debts, and the form of it. Gilb. Exc. 177.

† Debts are not bound by the *teſte* of the extent, but by the caption of the inquiſition. Bunb. 265.

Proceedings

Digitized by Google

Proceedings of this kind rare here.

Proceedings of this nature are very rare here, though frequent in the Exchequer in England, where ſeveral rules have been made concerning them, to prevent abuſes, which would be proper guides to follow here; for which ſee Gilb. Exc. 173.

Rules concerning them in England.

By thoſe rules, he who aſſigns a debt is to take an oath that the debt aſſigned is a juſt and true debt, and has not been formerly put in ſuit in any other court; and that it is his own proper debt, originally due to him, *bona fide*, without any truſt; and that he hath not received the ſame nor any part thereof, except &c.

And by another, he who deſires any debt to be found by inquiſition in his aid, is to take an oath that he is juſtly indebted to A, one of the farmers of the King's cuſtoms, and that the ſame is a juſt and due debt, originally due unto the ſaid A, *bona fide*, without any manner of truſt; and that B is juſtly indebted to him originally and *bona fide*, without truſt; and that the ſaid debt hath not been put in ſuit in any other court; and that he hath not received the ſame, and that C is much decay'd in his eſtate, ſo that unleſs a ſpeedy courſe be taken againſt the ſaid C the ſaid debt is in danger of being loſt.

And by another, no further proceſs is to be taken for debts in aid, than to inquire and ſeize the lands, debts, and perſonal eſtate of him that is debtor to the King's debtor, or accomptant, unleſs it be by ſpecial order made in open court.

The

Digitized by Google

The reaſon of thoſe rules, Lord Chief Baron Gilbert ſays, was becauſe they made a ſtate of the proceſs; for many perſons indebted to the King aſſigned their own debts to the King, in order to get immediate extents againſt their debtors; and therefore the court took care, that they ſhould ſwear them to be juſt debts, and likewiſe that they ſhould proceed no farther than an inquiry and ſeizure, and not to ſell goods, without ſpecial order of court. And the reaſon of them.

By another rule there, no debts without ſpecialty ſhall be aſſigned to the King; otherwiſe in the caſe of debts in aid. Other rules.

By another, no debts without ſpecialty ſhall be found by inquiſition for debts in aid, unleſs it be by order, upon motion in open court, and except it be for debts due to the King's farmers.

And by another, no immediate proceſs of extent is to be awarded for debts in aid, but in caſes of extremity, and upon oath to be taken, as aforeſaid.

The reaſon of which is, becauſe no debts can appear to the court to be due to the King's debtor, without a ſpecialty; and the prerogative of the King ſhould not be abuſed, by the aſſignment of ſimple contract debts before they are tried; but where ſuch debts are found to be upon extents in aid, there they are recorded upon the oath of a jury; but the court will not let ſuch extent in aid iſſue, before they are ſatisfied that they are juſt debts, and neceſſary to be got in by the King's debtor. And the reaſon of them.

If

Digitized by Google

Sureties may have prerogative proceſs againſt principal.

If the principal debtor to the King fail, and his ſureties pay the debt, they ſhall have the prerogative proceſs againſt the principal. Comyn 390.

But as theſe immediate extents do not ſeem to have been practiſed in thoſe caſes in this kingdom, it will be ſufficient to refer to Hard. 404. Bunb. 58, 127, 221, 225, 300. Comyn 388. where ſeveral points are determined concerning the iſſuing them.

King's debtor obtaining a fraudulent extent in aid obliged to refund.

A farmer of exciſe having taken out an extent in aid againſt a debtor of his that had failed, by which means the other creditors of his debtor were defrauded, upon a bill brought againſt him in Chancery to be relieved, it appearing that he had ſufficient eſtate of his own to ſatisfy the King's debt, he was decreed to refund. 1 Vern. 469.

But ſuch matters are not examinable in the court of Chancery.

But in a later caſe, where one of the King's receivers took out an extent againſt himſelf, and had a ſimple contract debt due to himſelf found, and took out a *ſcire facias* againſt the executor of the ſimple contract debtor; and the executor brought his bill in Chancery to be relieved, ſuggeſting that the proceedings were fraudulent, and on purpoſe to gain a preference of creditors in a ſuperior degree, and that the receiver was able to pay the King's debt himſelf; the receiver pleaded the proceedings in the Exchequer in bar to the relief prayed, but confeſſed that he was able to pay the King's debt at the time of the extent; and the court allowed the plea. Prec. Cha. 47.

So

Digitized by Google

So where an extent in aid was taken out by a farmer of the hearth-money, againſt his own debtor, againſt whom a commiſſion of bankruptcy had before iſſued, but before the aſſignment of his effects; and the aſſignees brought their bill in Chancery to be relieved againſt the extents; the bill was diſmiſſed, for that the court of Chancery had no juriſdiction in theſe caſes; and that any irregularities in the extents were properly examinable in the court of Exchequer, from whence they iſſued. Prec. Cha. 153. 2 Vern. 426.

Digitized by Google

CHAP. XXVII.

OF THE SEVERAL REMEDIES FOR THE RECOVERY OF THE KING'S RENTS.

THE remedies for the recovery of the King's rents are either I. by diſtreſs, II. by ſeizure, or III. by information.

The King may diſtrain for his rent, on any lands of his tenant.

And firſt, as to the remedy by diſtreſs; if the King has a rent ſervice, rent charge, or rent ſeck, ariſing out of lands, he may diſtrain for it in all the other lands of his tenant, of whomſoever they be holden. 4 Inſt. 119. 2 Inſt. 132.

Whilſt in the poſſeſſion of his tenant.

But this is to be underſtood, where the lands ſo diſtrained are in the actual poſſeſſion of the King's tenant, and not in the poſſeſſion of his tenant for life, or years, or at will, ibid.

Tho' the rent ariſe out of a franchiſe, &c. 1 Will. 307.

And the King may reſerve a rent out of a franchiſe or matter incorporeal, as well as out of lands, and may diſtrain on any other lands of the tenant for it.

The King may diſtrain the goods of his under tenant off the land. 1 Ro. ab. 670. 2 R. ab. 159.

If a man hold of the King by rent, and arrears incur, and the tenant make leaſe to another, the King may diſtrain the goods of the under-tenant for the arrears, in any place off the land holden.

By

Digitized by Google

By the ſtat. of 52 Hen. III. c. 15. Eng. it is declared that it ſhall be lawful to no man to take diſtreſs out of his fee, or in the high-way, nor in the common ſtreet, but only to the King or his officers, having ſpecial authority to do ſo.

Diſtreſs for the King's debt not to be made by beaſts of the plough, nor too great diſtreſs taken.

And by the ſtat. of 28 Ed. I. c. 12. Eng. it is further provided, that all diſtreſſes which are to be taken for the King's debt ſhall not be made by beaſts of the plough, ſo long as a man may find other; and that too great diſtreſs ſhall not be taken for his debts, nor driven too far; and that if the debtor can find ſurety, until a day before the day limited to the ſheriff, the diſtreſs ſhall be releaſed in the mean time.

Great abuſes committed by ſheriffs, who farmed the revenue.

It is obſerved by Mr. Barrington in his obſervations upon the ſtatute *de ſcaccario*, that at this time the ſheriffs generally farmed the King's revenue, and conſequently were guilty of thoſe enormities and exactions which the farmers of the publick revenue have in all countries been juſtly charged with.

Replevin lies not againſt the King.

Replevin does not lie againſt the King, nor where the King is party, nor where the taking is in right of the King, and yet it is lawful in ſuch caſe for the ſheriff *primâ facie* to grant replevin, but when it is ſhewn that the King is party, or that the taking is in right of the King, there the ſheriff ſhall ceaſe. Br. repl. p. 33.

The reaſon why.

And Lord Chief Baron Gilbert aſſigns this reaſon; for that the diſtreſs for the King's debt is in the nature of a *levari*, which is a writ of execution; and that conſequently

Digitized by Google

no replevin lies againſt the King, any more than it does for goods taken in execution at the ſuit of common perſons.

Attachment will be granted againſt the party ſo replevying.

And in the caſe of a conſtable, who being fined by the commiſſioners of the land tax, and diſtrained, afterwards replevied, it was held by the court of Exchequer in England, that if there be a diſtreſs for any duty to the Crown, the perſon diſtrained cannot replevy; and that if he does, an attachment ſhall be granted againſt him for the contempt. Bunb. 14.

Or againſt the ſheriff.

And in the caſe of the King againſt ſir Thomas Denny in this court, 28 May 1756, a diſtreſs being taken for an arrear of quit rent, alleged to be due to the Crown, by virtue of a warrant from the collector of the diſtrict, was replevied by the ſheriff of the county, whereupon an attachment was awarded againſt the ſheriff; although it was inſiſted that no rent was due at the time of the diſtreſs.

And in the caſe of the King againſt the ſheriff of the county of Roſcommon, *&c.* Eaſter term 1757, on a like application, an attachment was awarded, unleſs cauſe; but no further proceedings were had, the ſheriff having made a proper ſubmiſſion.

The proper remedy for the party in ſuch caſe.

But if the party, whoſe goods are diſtrained for the King's debt, have any matter of relief to ſhow, the uſual method is to depoſite the ſum for which the diſtreſs is taken, and then to apply to the court by counſel, on affidavits of the facts; and if it appears to the court that the diſtreſs was taken improperly or unjuſtly, they will relieve the party, by ordering the ſheriff or other officer of the Crown, by whom the diſtreſs was taken, to return the

Digitized by Google

the money, or by attaching him, according to the circumſtances of the caſe. See the caſe of the King againſt Lord Ikerrin Trin. 1746.

Secondly, as to the remedy by writ of ſeizure; heretofore where lands, out of which a rent was payable to the Crown, were returned as waſte, the Crown was under great difficulty in the recovery of the rent; which being repreſented to government, on the 21ſt of February 1661, the following order was made, viz. Writs of ſeizure.

Whereas ſeveral lands in Ireland, liable to pay his Majeſty's new quit rents, are by the commiſſioners appointed for aſſeſſing the ſaid lands returned waſte, to the leſſening that branch of his Majeſty's revenue; which being made known to the lords juſtices and council, their lordſhips by their order of the † 22 February inſt. did require and direct the Lord Chief Baron and the reſt of the Barons of this court, to cauſe all ſuch lands to be ſeized into his Majeſty's hands, and diſpoſed of for his advantage and benefit, until the quit rent with the arrears thereof be diſcharged, as by the ſaid order remaining of record in the Lord Treaſurer's remembrancer's office of this court appeareth; in purſuance whereof it is ordered by the court, that the ſaid remembrancer do forthwith iſſue * ſeizures to the ſheriffs of the reſpective counties of this kingdom. Rule of 21 Feb. 1661, as to ſuch writs, where lands are returned waſte.

† So in the original, but the date muſt be a miſtake.

* It does not ſeem very clear, in what light theſe ſeizures are to be conſidered, or upon what legal authority they are founded; for an order of government ſolely cannot be deemed ſuch. If they are to be conſidered as a prerogative proceſs, in the nature of an immediate extent or *levari*, for the levying the debt due to the Crown, they ſeem not warranted by the laws of this kingdom; ſuch proceſs being, as has been ſhown in the laſt chapter, grounded on the ſtat. of 33 Hen. 8. 39. Eng. and even in England, it ſeems to be held that a *levari* ought not to iſſue for a fee farm

Digitized by Google

kingdom wherein ſuch lands do lie, to ſeize the ſame into his Majeſty's hands, returnable the next Eaſter term; and in order thereunto his Majeſty's Auditor general is to return to the ſaid remembrancer a full and perfect liſt of the lands ſo returned waſte, to the end that his Majeſty's revenue may the ſpeedier be * performed.

And the conſtant uſage hath been ſince, if a ſufficient diſtreſs be not to be had, upon a proper affidavit of the fact, and upon a *conſtat* from the Auditor general of the charge upon the lands, and the arrear due, and upon counſel's motion thereon, for the Court to award a writ of ſeizure, without a *ſcire facias*, directed to the ſheriff, to ſeize the lands.

Seizure of incorporeal thing.

So likewiſe if the arrear be out of the rent of a rectory, tithes, fair, ferry, fiſhery, or other incorporeal thing, of which there can be no diſtreſs, upon ſuch *conſtat* and motion the court will grant a writ of ſeizure.

Conſtat of the rent in lieu of an office.

And the *conſtat* is deemed a ſufficient finding of the King's title upon record to ſupply the want of an office, which in ſuch caſes has been held neceſſary to entitle the King.

Seizure where diſtreſs is reſcued.

It has been doubted whether upon a reſcue of a diſtreſs taken for the King's rent the court could grant a writ of ſeizure; but in Trin. term, 18 July, 1750, in the caſe of

farm rent; but that a diſtreſs is the proper remedy. Bunb. 348. If they are conſidered as a re-entry by the Crown, for a breach of condition, in non-payment of the rent, it may be queſtioned whether there ſhould not be a previous inquiſition finding the rent to be due. See 2 Inſt. 205. Cr. El. 220, 855. Cr. Car. 100. Poph. 53. 5 Co. 56. b. 2. Ro. ab. 184, 215.

* So in the original.

the

Digitized by Google

the King againſt the lands of Clonbeg, it was determined that in ſuch caſe a writ of ſeizure is a proper remedy to recover the arrear; for that where the diſtreſs is reſcued the lands are in effect as waſte; and it was likewiſe held that it is not neceſſary in ſuch caſe to give notice to the tenants before the iſſuing the writ; for that the diſtreſs and reſcue are a ſufficient notice that the rent was due; and that if a conditional order were made, the punctuality and nicety required in ſerving it, and the opportunity given thereby to the parties to conteſt the ſervice and the charge, would put the Crown to more expenſe than the value of the arrear; ſo that the King would loſe by recovering his rents.

And attachment.

And the court will alſo in ſuch caſe grant attachments againſt the perſons committing the reſcue; as was done 3d Feb. 1756, in the caſe of the King againſt the lands of Bonane in the county of Sligo.

Upon affidavit of the driver.

The affidavit of the diſtreſs and reſcue is generally made by the collector's driver, who is to ſwear that he was authorized and empowered by the collector to diſtrain the land; and this affidavit is to be filed in the ſecond remembrancer's office.

Rule of 4 Dec. 1711, reſtraining the commiſſioners from ſeizing, &c.

Formerly it was uſual for the collectors of diſtricts, by order from the commiſſioners of the revenue only, and without a writ of ſeizure, or any writ or proceſs from the court, to ſeize rectories, tithes, &c. for arrears of Crown rent, and to ſet them to tenants. But by a rule made in this court, 4 Dec. 1711, it was declared that ſuch practice was contrary to law, and the ancient and conſtant uſage and courſe of the Exchequer: for that when any rectory, vicarage, or lands, are in arrear to the Crown, the commiſſioners

Digitized by Google

ſioners cannot ſeize them, but muſt apply to the court of Exchequer in the uſual manner, who thereon iſſue their ſeizure, directed to the ſheriff of the county where the lands lie; on return of which the court grants a *cuſtodiam* thereof to ſome perſon in truſt for the Crown until the arrear be paid. And the court declared that the commiſſioners ought for the future to proceed on all ſuch occaſions according to the ancient uſage of the Exchequer.

Attachment to the ſheriff, and writ of aſſiſtance to aid the purſuivant.

In ſome ſpecial caſes the court have directed the attachment to iſſue to the ſheriff; as was done in two caſes 21 Nov. 1688. And they will upon ſpecial application order a writ of aſſiſtance to iſſue to aid the purſuivant.

Proceedings on the ſeizure by inquiſition, *cuſtodiam*, and injunction.

Upon the writ of ſeizure, as upon a *levari facias*, the ſheriff is to call a jury, and hold an inquiry, in order to find the lands, *&c.* and their value; which finding he is to return into this court, and alſo that he has ſeized the lands, *&c.* into his hands for his Majeſty's uſe; upon which return and finding a *cuſtodiam* is to be made out, and an injunction iſſued, as is mentioned in the laſt chapter.

Whether the tenants in poſſeſſion may be removed by the injunction.

And it is ſaid that on this injunction the ſheriff may remove and turn out every tenant on the lands, although they ſhould have legal intereſts ſubſiſting prior to the ſeizure; for that the King's ſeizure is in this caſe in the nature of a re-entry for the non-payment of the rent; and that the King comes in then by title paramount to all leaſes made by his tenant. However this power is rarely put in execution, and only in deſperate caſes; the uſual method being to get an order for the tenants to pay their rents or ſet out their tithes as the caſe is.

And

Digitized by Google

And when the cuſtodee of the Crown is put into poſſeſſion of the lands, &c. he may ſet them to tenants during his intereſt therein, without any order or further power from the court whatſoever; and the uſual method is by publick cant, after publick notice given, from year to year. But if they be ſet at an under value, or there be any improper methods uſed in ſetting them, the court upon proper application will relieve the party injured. Cuſtodee may ſet the lands, without further order.

Thirdly, the King may have remedy by information in debt, in the name of his Attorney general, againſt the grantee or alienee of the land, or againſt his heir, or againſt an incumbent of a rectory, &c. for rent accrued during their time; as he may likewiſe againſt the Executor, &c. of the grantee, for arrears due in the time of the teſtator; or againſt the heir, if the Executor, &c. has not aſſets ſufficient; and upon judgment obtained in ſuch information, the Crown may have a *levari*. Of the remedy by information in debt.

Or an Engliſh information may be brought in the equity ſide of the Exchequer, againſt the heir, executor, or adminiſtrator of the grantee or alienee, for rent incurred in the time of the anceſtor; which is the more eligible method, becauſe the Crown may thereby have a diſcovery of aſſets *. Or Engliſh bill.

* Mr. Howard having, in the exerciſe of the duty of his office, had frequent occaſions to take the opinions of the moſt eminent council, as well in England as this kingdom, with regard to the proper methods of proceeding for the recovery of the King's rents, under different circumſtances, and thoſe opinions having received the ſanction from time to time of judicial determinations by this court, he apprehends it may not be uſeleſs to inſert here an abſtract of them.

Digitized by Google

And it was holden, that the cattle, &c. on the lands out of which the rent is due, in the hands of the heir of the grantee, may be diſtrained for rent due, as well in the time of his anceſtor as in his own time; and that the cattle, &c. on other lands of the heir in his poſſeſſion may be diſtrained for rent incurred in his own time. And that the ſame holds as to the alienee and his heir.

That where a diſtreſs is to be taken on other lands of the King's tenant, than thoſe which are charged with the rent by the grant, and in another diſtrict, in ſuch caſe, as the collectors are confined to their ſeveral diſtricts, ſo that the collector of that where the lands charged lie cannot diſtrain the other lands, nor the collector of that where the latter lie cannot diſtrain for rent not given in charge to him, it is proper that the commiſſioners of the revenue do give a ſpecial authority for the purpoſe to the collector of the diſtrict where the diſtreſs is to be made.

That where the King grants a rectory or tithes to a biſhop and his ſucceſſors, in truſt for the incumbents having cure of ſouls in *his dioceſe*, *the King may* diſtrain the cattle of the incumbent in any lands in his actual poſſeſſion (though no part of the glebe land, or any land belonging to the rectory) for any rent which became due during his incumbency, but not for any arrear which accrued in the time of his predeceſſor; but that the glebe lands may be diſtrained for the arrears due in the time of his predeceſſor.

That where a grant is made by the Crown of impropriate or appropriate tithes, under the act of ſettlement, to a biſhop and his ſucceſſors, to the uſe of the incumbent and his ſucceſſors, "the biſhop, &c. to permit the incumbents to take the tithes, &c the incumbents, &c. from time to time indemnifying the biſhops," by which words it ſhould ſeem to be the intention of the grant, that the biſhop ſhould be liable, yet as the act of ſettlement (ante 207) veſts the tithes in the incumbents, and the rents are reſerved from and payable by the incumbents, who ſhould therefore be conſidered in conſtruction of law as having thoſe tithes, and as falling under the deſcription of the *levari*, which mentions ſuch lands, &c. as the debtor had, &c. (Godb. 294), and as there is a clear remedy againſt the incumbent, no attempt ſhould be made to recover the rent from the biſhop.

In the year 1762 ſeveral large arrears of Crown rent for fifty years and upwards having grown due out of ſeveral rectories and tithes, and eſpecially in the county of Dublin, of which there did not appear any grants from the Crown, nor any evidence of the title of the Crown thereto, except the ancient rent-rolls, and the act of ſettlement, by which all forfeited rectories and tithes are veſted in the incumbents having cure of ſouls; in this caſe it was agreed by thoſe opinions:

1. That if the rectory appeared to be impropriate or appropriate ſuch rent-rolls will be good evidence of the Crown rent anciently reſerved.

2. That

Digitized by Google

2. That theſe rent-rolls, conſidering the length of time ſince any rent was paid to the Crown, would not be ſufficient evidence in themſelves to ſupport the title of the Crown, eſpecially as there are other circumſtances the proof of which, or ſome of them, might be expected, as that the rectory was impropriate before 1641, that it was ſeized and ſequeſtered during the time of that rebellion, the attainder of the proprietor, &c.

Ex. E. P. 16.

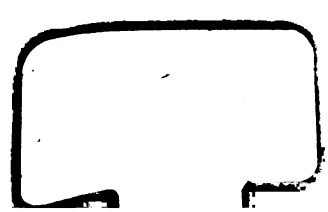
END OF THE FIRST VOLUME.

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google



Digitized by Google

Digitized by Google